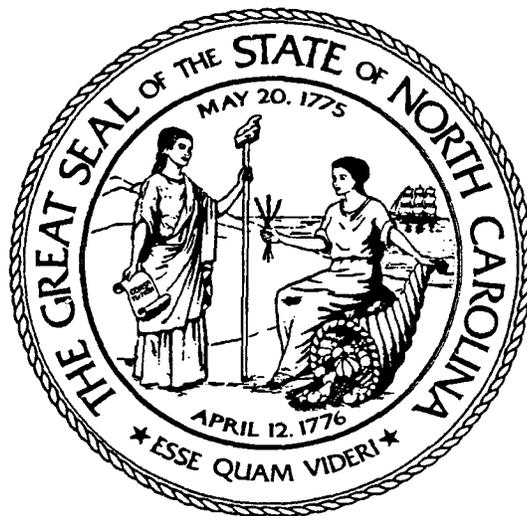


**REPORT OF THE
DEPOSITORY INSTITUTIONS STUDY
COMMISSION**



**REPORT TO THE
1991 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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January 30, 1991

TO THE MEMBERS OF THE 1991 GENERAL ASSEMBLY:

The North Carolina Depository Institutions Study Commission herewith submits to you for your consideration its final report on the impact on North Carolina depository institutions of national developments within the depository institution industry. The report was prepared by the Depository Institutions Study Commission pursuant to Part XV of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,

A handwritten signature in cursive script that reads "William W. Staton".

William W. Staton

A handwritten signature in cursive script that reads "Harold J. Brubaker".

Harold J. Brubaker

Cochairmen
Depository Institutions Study Commission



PREFACE

The North Carolina Depository Institutions Study Commission was established by Part XV of Chapter 802 of the 1989 Session Laws. The Commission was co-chaired by Senator William W. Staton and Representative Harold J. Brubaker and consisted of eighteen members: five members of the Senate and three public members appointed by the President Pro Tempore of the Senate; five members of the House of Representatives and two public members appointed by the Speaker of the House of Representatives; and three ex officio members: the North Carolina Commissioner of Banks and the Administrators of the Savings Institution and Credit Union Divisions of the North Carolina Department of Community and Economic Development.

Chapter 802 instructed the Commission to study "national developments within the depository institutions industry and what effect, if any, these developments will have upon North Carolina depository institutions." The Commission was also directed to recommend any administrative actions or legislative actions it deemed desirable. Funding for the Commission is drawn from amounts appropriated to the State Banking Commission. Part XV of Chapter 802 is set out in Appendix A of this report. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.



COMMITTEE PROCEEDINGS

The North Carolina Depository Institutions Study Committee met five times after the 1990 session. The first meeting, on September 26, 1990 was principally devoted to a discussion of soundness ratings of state-chartered depository institutions and proposals to strengthen the regulatory structure.

At the next meeting, on October 25, 1990, the sole topic of discussion was a proposed financial regulatory agency reorganization.

On November 26, 1990, the Committee heard various legislative proposals from the Commissioner of Banks and the North Carolina Savings Institutions Division. The North Carolina Funeral Directors Association presented an alternative proposal to regulate preneed burial trusts and a subcommittee was appointed to consider the matter.

At the December 17, 1990 meeting, the Committee heard the subcommittee's report and adopted its recommendations. The Committee also considered various legislative proposals and agreed on a rough draft of a report to be considered at the next meeting.

At the last meeting, on January 25, 1991, the Committee voted on the remaining legislative proposals and approved its final report.



RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Depository Institutions Study Commission recommends the following legislation to the 1991 Session of the General Assembly. The Commission's legislative proposal consists of eleven bills. Each proposed bill is followed by a brief explanation of the proposal.

The Commission perceives that over the next year a number of developments in financial institution law and regulation are likely to occur at the federal level. These revisions will almost certainly impact the administration of state-chartered banks, thrifts, and credit unions. Therefore, at the conclusion of the current session of the General Assembly, the Depository Institutions Study Commission recommends that it be reconvened for the purposes of assessing the federal developments and recommending appropriate state action. To that end, the Banking, Savings and Loan, and Credit Union Commissions have agreed to fund this further study to the extent permissible, but in no event, in an amount exceeding \$25,000. The respective agencies shall agree among themselves as to the amount each shall contribute toward the cost of the continued study.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

Proposal 1

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

S D

SENATE DRS7502-RO014(1.25)

Short Title: Savings Bank Act. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A SAVINGS BANK CHARTER IN NORTH CAROLINA.
3 The General Assembly of North Carolina enacts:
4 Section 1. The General Statutes of North Carolina are amended by
5 adding a new Chapter 54C to read as follows:
6 "ARTICLE 1.
7 "General Provisions.
8 "§ 54C-1. Title.
9 This Chapter shall be known and may be cited as 'Savings Banks.'
10 "§ 54C-2. Purpose.
11 The purpose of this Chapter is:

1 (b) The application to organize a State savings bank shall be received by the
2 Administrator not less than 60 days prior to the scheduled consideration of the
3 application by the Commission, and it shall contain.

4 (1) The original of the certificate of incorporation, which shall be
5 signed by the original incorporators, or a majority of them, but not
6 less than five, and shall be properly acknowledged by a person
7 duly authorized by this State to take proof or acknowledgment of
8 deeds; and two conformed copies;

9 (2) The names and addresses of the incorporators; and the names and
10 addresses of the initial members of the board of directors;

11 (3) Statements of the anticipated receipts, expenditures, earnings and
12 financial condition of the savings bank for its first three years of
13 operation, or such longer period as the Administrator may require;

14 (4) A showing satisfactory to the Commission that:

15 a. The public convenience and advantage will be served by the
16 establishment of the proposed savings bank;

17 b. There is a reasonable demand and necessity in the
18 community which will be served by the establishment of the
19 proposed savings bank;

20 c. The proposed savings bank will have a reasonable
21 probability of sustaining profitable and beneficial operations
22 within a reasonable time in the community in which the
23 proposed savings bank intends to locate;

24 d. The proposed savings bank, if established, will promote
25 healthy and effective competition in the community in the
26 delivery to the public of savings institution services;

27 (5) The proposed bylaws;

28 (6) Statements, exhibits, maps and other data which may be prescribed
29 or requested by the Administrator, which data shall be sufficiently
30 detailed and comprehensive so as to enable the Administrator to
31 pass upon the criteria set forth in this Article.

32 (c) The application shall be signed by the original incorporators or a majority of
33 them but not less than five, and shall be properly acknowledged by a person duly
34 authorized by this State to take proof and acknowledgement of deeds.

35 "§ 54C-10. Certificate of incorporation.

36 (a) The certificate of incorporation of a proposed mutual savings bank shall set
37 forth:

38 (1) The name of the savings bank, which must not so closely resemble
39 the name of an existing depository institution doing business under
40 the laws of this State as to be likely to mislead the public;

41 (2) The county and city or town where its principal office is to be
42 located in this State; and the name of its registered agent and the
43 address of its registered office, including county and city or town,
44 and street and number;

- 1 (3) The period of duration, which may be perpetual. When the
2 certificate of incorporation fails to state the period of duration, it
3 shall be considered perpetual;
- 4 (4) The purposes for which the savings bank is organized which shall
5 be limited to purposes permitted under the laws of this State for
6 savings banks;
- 7 (5) The amount of the entrance fee per deposit account based upon
8 the amount pledged;
- 9 (6) The minimum amount on deposit in deposit accounts before it
10 shall commence business;
- 11 (7) Any provision not inconsistent with this Chapter and the proper
12 operation of a savings bank, which the incorporators shall set forth
13 in the certificate of incorporation for the regulation of the internal
14 affairs of the savings bank;
- 15 (8) The number of directors, which shall not be less than seven,
16 constituting the initial board of directors (which may be classified
17 in the certificate of incorporation) and the name and addresses of
18 each person who is to serve as a director until the first meeting of
19 members, or until his successor be elected and qualified;
- 20 (9) The names and addresses of the incorporators.

21 (b) The certificate of incorporation of a proposed stock savings bank shall set
22 forth:

- 23 (1) The name of the savings bank which must not so closely resemble
24 the name of an existing depository institution doing business under
25 the laws of this State as to be likely to mislead the public;
- 26 (2) The county and city or town where its principal office is to be
27 located in this State; and the name of its registered agent and the
28 address of its registered office, including county and city or town,
29 and street and number;
- 30 (3) The period of duration, which may be perpetual. When the
31 certificate of incorporation fails to state the period of duration, it
32 shall be considered perpetual;
- 33 (4) The purposes for which the savings bank is organized, which shall
34 be limited to purposes permitted under the laws of this State for
35 savings banks;
- 36 (5) With respect to the shares of stock which the savings bank shall
37 have authority to issue;
 - 38 a. If the stock is to have a par value, the number of such shares
39 of stock and the par value of each;
 - 40 b. If the stock is to be without par value, the number of such
41 shares of stock;
 - 42 c. If the stock is to be of both kinds mentioned in paragraphs
43 a. and b. above of this subdivision, particulars in accordance
44 with those paragraphs;

d. If the stock is to be divided into classes, or into series within a class of preferred or special shares of stock, the certificate of incorporation shall also set forth a designation of each class, with a designation of each series within a class, and a statement of the preferences, limitations, and relative rights of the stock of each class or series;

(6) The minimum amount of consideration to be received for its shares of stock before it shall commence business;

(7) A statement as to whether stockholders have preemptive rights to acquire additional or treasury shares of the savings bank;

(8) Any provision not inconsistent with this Chapter or the proper operation of a savings bank, which the incorporators shall set forth in the certificate of incorporation for the regulation of the internal affairs of the savings bank;

(9) The number of directors, which shall not be less than seven, constituting the initial board of directors (which may be classified in accordance with provisions in the certificate of incorporation) and the name and address of each person who is to serve as a director until the first meeting of the stockholders, or until his successor be elected and qualified;

(10) The names and addresses of the incorporators.

§ 54C-11. Administrator to consider application.

Upon receipt of an application to organize and establish a savings bank, the Administrator shall examine or cause to be examined all the relevant facts connected with the formation of the proposed savings bank. If it appears to the Administrator that the proposed savings bank has complied with all the requirements set forth in this Chapter and the rules and regulations for the formation of a savings bank and is otherwise lawfully entitled to be organized and established as a savings bank, the Administrator shall present the application to the Commission for its consideration.

§ 54C-12. Criteria to be met before the Administrator may recommend approval of an application.

(a) The Administrator may recommend approval of an application to form a mutual savings bank only when all of the following criteria are met:

(1) The proposed savings bank has an operational expense fund, from which to pay organizational and incorporation expenses, in an amount determined by the Administrator to be sufficient for the safe and proper operation of the savings bank, but in no event less than seventy-five thousand dollars (\$75,000). The moneys remaining in such expense fund shall be held by the savings bank for at least one year from its date of licensing. No portion of such fund shall be released to an incorporator or director who contributed to it, nor to any other contributor, nor to any other person, and no dividends shall be accrued or paid on such funds without the prior approval of the administrator.

- 1 (2) The proposed savings bank has pledges for deposit accounts in an
2 amount determined by the Administrator to be sufficient for the
3 safe and proper operation of the savings bank, but in no event less
4 than four million dollars (\$4,000,000).
- 5 (3) All entrance fees for deposit accounts of the proposed savings bank
6 have been made with legal tender of the United States.
- 7 (4) The name of the proposed savings bank will not mislead the public
8 and is not the same as an existing depository institution or so
9 similar to the name of an existing depository institution as to
10 mislead the public.
- 11 (5) The character, general fitness and responsibility of the
12 incorporators and the initial board of directors of the proposed
13 savings bank, a majority of whom shall be residents of North
14 Carolina, are such as to command the confidence of the
15 community in which the proposed savings bank intends to locate.
- 16 (6) There is a reasonable demand and necessity in the community
17 which will be served by the establishment of the proposed savings
18 bank.
- 19 (7) The public convenience and advantage will be served by the
20 establishment of the proposed savings bank.
- 21 (8) The proposed savings bank will have a reasonable probability of
22 sustaining profitable and beneficial operations in the community.
- 23 (9) The proposed savings bank, if established, will promote healthy
24 and effective competition in the community in the delivery to the
25 public of savings institution services.

26 (b) The Administrator may recommend approval of an application to form a stock
27 savings bank only when all of the following criteria are met:

- 28 (1) The proposed savings bank has prepared a plan to solicit
29 subscriptions for capital stock in an amount determined by the
30 Administrator to be sufficient for the safe and proper operation of
31 the savings bank, but in no event less than three million dollars
32 (\$3,000,000).
- 33 (2) The name of the proposed savings bank will not mislead the public
34 and is not the same as an existing depository institution or so
35 similar to the name of an existing depository institution as to
36 mislead the public; and contains the wording 'corporation,'
37 'incorporated,' 'limited,' 'company,' or an abbreviation of one of
38 such words or other words sufficient to distinguish stock savings
39 banks from mutual savings banks.
- 40 (3) The character, general fitness and responsibility of the
41 incorporators, initial board of directors, and initial stockholders of
42 the proposed savings bank are such as to command the confidence
43 of the community in which the proposed savings bank intends to
44 locate.

1 (4) There is a reasonable demand and necessity in the community
2 which will be served by the establishment of the proposed savings
3 bank.

4 (5) The public convenience and advantage will be served by the
5 establishment of the proposed savings bank.

6 (6) The proposed savings bank will have a reasonable probability of
7 sustaining profitable and beneficial operations in the community.

8 (7) The proposed savings bank, if established, will promote healthy
9 and effective competition in the community in the delivery to the
10 public of savings institution services.

11 (c) The minimum amount of pledges for deposit accounts or subscriptions for
12 capital stock may be adjusted in the discretion of the Administrator if he determines
13 that a greater requirement is necessary or that a smaller requirement will provide a
14 sufficient capital base. Such a finding and recommendation to the Commission shall
15 be based upon due consideration of (i) the population of the proposed trade area, (ii)
16 the total deposits of the depository institutions operating in the proposed trade area,
17 (iii) the economic conditions of and projections for the proposed trade area, (iv) the
18 business experience and reputation of the proposed management, (v) the business
19 experience and reputation of the proposed incorporators and directors, and (vi) the
20 projected deposit growth, capitalization, and profitability of the proposed savings
21 bank.

22 **"§ 54C-13. Savings Institution Commission to review findings and recommendations**
23 **of Administrator.**

24 (a) If the Administrator does not have the completed application within 120 days
25 of the filing of the preliminary application, the application shall be returned to the
26 applicants.

27 (b) When the Administrator has completed his examination and investigation of
28 the facts relevant to the establishment of the proposed savings bank, he shall present
29 his findings and recommendations to the Commission at a public hearing. The
30 Commission must approve or reject an application within 180 days of the submission
31 of the preliminary application.

32 (c) Not less than 45 days prior to the public hearing held for the consideration of
33 the application to establish a savings bank, the incorporators shall cause to be
34 published a notice in a newspaper of general circulation in the area to be served by
35 the proposed savings bank. Such notice shall contain:

36 (1) A statement that the application has been filed with the
37 Administrator;

38 (2) The name of the community where the principal office of the
39 proposed savings bank intends to locate;

40 (3) A statement that a public hearing shall be held to consider the
41 application; and

42 (4) A statement that any interested or affected party may file a written
43 statement either favoring or protesting the creation of the proposed

1 savings bank. Such statement must be filed with the Administrator
2 within 30 days of the date of publication.

3 (d) The Commission, at the public hearing, shall consider the findings and
4 recommendation of the Administrator and shall hear such oral testimony as he may
5 wish to give or be called upon to give, and shall also receive information and hear
6 testimony from the incorporators of the proposed savings bank and from any and all
7 other interested or affected parties. The Commission shall hear only testimony and
8 receive only information which is relevant to the consideration of the application and
9 the operation of the proposed savings bank.

10 **"§ 54C-14. Grounds for approval or denial of application.**

11 (a) After consideration of the findings and recommendation of the Administrator
12 and his oral testimony, if any, and the consideration of such other information and
13 evidence, either written or oral, as has come before it at the public hearing, the
14 Commission shall approve or disapprove the application within 30 days after the
15 public hearing. The Commission shall approve the application if it finds that the
16 certificate of incorporation is in compliance with the provisions of G.S. 54C-10, that
17 all the criteria set out in G.S. 54C-12 have been complied with, and that all other
18 applicable provisions of this Chapter, rules and regulations, and the General Statutes
19 have been complied with.

20 (b) If the Commission approves the application, the Administrator shall so notify
21 the Secretary of State with a certificate of approval, accompanied by the original of
22 the certificate of incorporation and the two conformed copies.

23 (c) Upon receipt of the certificate of approval, the original of the certificate of
24 incorporation, and the two conformed copies, the Secretary of State shall, upon the
25 payment by the newly chartered savings bank of the appropriate organization tax and
26 fees, file the certificate of incorporation in accordance with G.S. 55-1-20. He shall
27 certify under his official seal the two conformed copies of the certificate of
28 incorporation, one of which shall forthwith be forwarded to the incorporators or their
29 representative, the other of which shall be forwarded to the office of the
30 Administrator for filing. Upon the recordation of the certificate of incorporation by
31 the Secretary of State, the savings bank shall be a body politic and corporate under
32 the name stated in such certificate, and shall be authorized to begin the savings bank
33 business when duly licensed by the Administrator.

34 (d) The said certificate of incorporation, or a copy thereof, duly certified by the
35 Secretary of State, or by the register of deeds of the county where the savings bank is
36 located, or by the Administrator, under their respective seals, shall be evidence in all
37 courts and places, and shall, in all judicial proceedings, be deemed prima facie
38 evidence of the complete organization and incorporation of the savings bank
39 purporting thereby to have been established.

40 (e) After approval of the application, the Administrator shall supervise and
41 monitor the organization process. He shall ensure that sufficient pledges for deposit
42 accounts or subscriptions for capital stock as well as insurance of deposit accounts
43 have been secured by the organizers.

44 **"§ 54C-15. Final decision.**

1 The Commission shall present the Administrator with a final decision which shall
2 be in accordance with the applicable provisions of Chapter 150B of the General
3 Statutes.

4 "§ 54C-16. Appeal.

5 The final decision of the Commission may be appealed in accordance with
6 Chapter 150B of the General Statutes.

7 "§ 54C-17. Insurance of accounts required.

8 All State savings banks must obtain, and maintain insurance on all members' and
9 customers' deposit accounts from an insurance corporation created by an act of
10 Congress. Prior to the licensing of a savings bank, a certificate of incorporation duly
11 recorded under the provisions of G.S. 54C-14(c), shall be deemed to be sufficient
12 certification to the insuring corporation that the savings bank is a legal corporate
13 entity. Such insurance must be obtained within the time limit prescribed in G.S.
14 54C-19. Subject to the rules and regulations of the Administrator, a State savings
15 bank may obtain or participate in efforts to obtain insurance of deposits that is in
16 excess of the amount eligible for federal insurance of accounts. Such insurance shall
17 be known as 'excess insurance'.

18 "§ 54C-18. Status as IRS qualified thrift institution.

19 All State savings banks must qualify for and maintain eligibility for the bad debt
20 reserve under section 7701(a)(19) of the Internal Revenue Code of 1968 and any
21 amendments thereto.

22 "§ 54C-19. Time allowed to commence business.

23 A newly chartered savings bank shall commence business within one year after the
24 date upon which its corporate existence shall have begun. A savings bank which
25 shall not commence business within such time, shall forfeit its corporate existence,
26 unless the administrator, before the expiration of such one-year period, shall have
27 approved an extension of the time within which the association may commence
28 business, upon a written request stating the reasons for such a request. Upon
29 forfeiture, the certificate of incorporation shall expire, and any and all action taken in
30 connection with the incorporation and chartering of the savings bank, with the
31 exception of fees paid to the Division, shall become null and void. The
32 Administrator shall determine if a savings bank has failed to commence business
33 within one year, without extension as provided in this section, and shall notify the
34 Secretary of State and the register of deeds in the county in which the savings bank is
35 located that the certificate of incorporation has expired.

36 "§ 54C-20. Licensing.

37 A newly chartered savings bank shall be entitled to a license to operate upon
38 payment to the Division of the appropriate license fee as prescribed by the
39 Administrator, when it shows to the satisfaction of the Administrator evidence of
40 capable, efficient, and equitable management, that the organization of the savings
41 bank has been conducted pursuant to law and is complete and when it passes a final
42 inspection by the administrator or his representatives preceding the opening of its
43 doors for business.

44 "§ 54C-21. Amendments to certificate of incorporation.

1 (a) Any amendment to the certificate of incorporation of a State savings bank
2 shall be made at any annual or special meeting of such savings bank, held in
3 accordance with the provision of G.S. 54C-106 and G.S. 54C-107, by a majority of
4 votes or shares cast by members or stockholders present in person or by proxy at such
5 meeting. Any amendment shall be certified by the appropriate corporate official,
6 submitted to the Administrator for his approval or rejection, and if approved, then
7 certified by the Administrator and recorded as provided in G.S. 54C-14 for
8 certificates of incorporation.

9 (b) Notwithstanding the provisions of subsection (a) of this section, any State
10 savings bank may change its registered office or its registered agent or both in
11 accordance with the provisions of G.S. 55-5-02. A copy of the statement or certificate
12 certified by the Secretary of State shall be filed by the savings bank in the office of
13 the Administrator.

14 "§ 54C-22. List of stockholders to be maintained.

15 Every stock savings bank organized and operated under the provisions of this
16 Chapter shall at all times cause to be kept an up-to-date list of the names of all its
17 stockholders. Whenever called upon by the Administrator, a stock savings bank shall
18 file in the office of the Administrator a correct list of all its stockholders, the resident
19 address of each, the number of shares of stock held by each, and the dates of issue.

20 "§ 54C-23. Branch offices.

21 (a) Any State savings bank may apply to the Administrator for permission to
22 establish a branch office. The application shall be in such form as may be prescribed
23 by the Administrator and shall be accompanied by the proper branch application fee.
24 Branch applications shall be approved or denied by the Administrator within 120
25 days of filing.

26 (b) The Administrator shall approve a branch application when all of the
27 following criteria are met:

- 28 (1) The applicant has gross assets of at least ten million dollars
29 (\$10,000,000);
30 (2) The applicant has evidenced financial responsibility;
31 (3) The applicant has a net worth equal to or exceeding the amount
32 required by the insurer of deposit accounts;
33 (4) The applicant has an acceptable internal control system. Such a
34 system would include certain basic internal control requirements
35 essential to the protection of assets and the promotion of
36 operational efficiency regardless of the size of the applicant.

37 (c) Upon receipt of a branch application, the Administrator shall examine or
38 cause to be examined all the relevant facts connected with the establishment of the
39 proposed branch office. If it appears to the satisfaction of the Administrator that the
40 applicant has complied with all the requirements set forth in this section and the
41 regulations for the establishment of a branch office and that the savings bank is
42 otherwise lawfully entitled to establish such branch office, then the Administrator
43 shall approve the branch application.

1 (d) Not more than 10 days following the filing of the branch application with the
2 Administrator, the applicant shall cause a notice to be published in a newspaper of
3 general circulation in the area to be served by the proposed branch office. Such
4 notice shall contain:

5 (1) A statement that the branch application has been filed with the
6 Administrator;

7 (2) The proposed address of the branch office, including city or town
8 and street; and

9 (3) A statement that any interested or affected party may file a written
10 statement with the Administrator, within 30 days of the date of the
11 publication of the notice, protesting the establishment of the
12 proposed branch office and requesting a hearing before the
13 Administrator on the application.

14 (e) Any interested or affected party may file a written statement with the
15 Administrator within 30 days of the date of initial publication of the branch
16 application notice, protesting the establishment of the proposed branch office and
17 requesting a hearing before the Administrator on the application. If a hearing is held
18 on the branch application, the Administrator shall only receive information and hear
19 testimony from the applicant and from any interested or affected party which is
20 relevant to the branch application and the operation of the proposed branch office.
21 The Administrator shall issue his final decision on the branch application within 30
22 days following the hearing. Such final decision shall be in accordance with the
23 applicable provisions of Chapter 150B of the General Statutes.

24 (f) If a hearing is not held on the branch application, the Administrator shall issue
25 his final decision within 120 days of the filing of the application. Such final decision
26 shall be in accordance with the applicable provisions of Chapter 150B of the General
27 Statutes.

28 (g) Any party to a branch application may appeal the final decision of the
29 Administrator to the Commission at any time after final decision, but not later than
30 30 days after a written copy of the final decision is served upon the party and his
31 attorney of record by personal service or by certified mail. Failure to file such appeal
32 within the time stated shall operate as a waiver of the right of such party to review by
33 the Commission and by a court of competent jurisdiction in accordance with Chapter
34 150B of the General Statutes, relating to judicial review.

35 **"§ 54C-24. Request to change location of a branch or principal office.**

36 The board of directors of a State savings bank may change the location of a branch
37 office or the principal office of the savings bank with the prior written approval of
38 the Administrator. The Administrator may request, and the savings bank shall
39 provide, such information as the Administrator determines is necessary to evaluate
40 the request.

41 **"§ 54C-25. Approval revoked; branch office.**

42 The Commission may, for good cause and after a hearing, order the closing of a
43 branch office. Such order shall be made in writing to the savings bank and shall fix a
44 reasonable time after which the savings bank shall close the branch office.

1 "§ 54C-26. Branch offices closed.

2 The Board of a State savings bank may discontinue the operation of a branch
3 office upon giving at least 30 days prior written notice to the Administrator, the
4 notice to include the date upon which the branch office shall be closed.

5 "§ 54C-27. Loan production office.

6 A State savings bank may open or close a loan production office with the prior
7 written approval of the Administrator. The Administrator may request, and the
8 savings bank shall provide, such information as the Administrator determines is
9 necessary to evaluate the request.

10 "§§ 54C-28 to 54B-29: Reserved for future codification purposes.

11 "ARTICLE 3.

12 "Corporate Changes.

13 "§ 54C-30. Conversion to savings bank.

14 (a) Any association or State or national bank, upon a majority vote of its board of
15 directors, may apply to the Administrator for permission to convert to a State savings
16 bank and for certification of appropriate amendments to its certificate of
17 incorporation to effect the change. Upon receipt of an application to convert to a
18 State savings bank, the Administrator shall examine all facts connected with the
19 conversion. The expenses and cost of the examination shall be paid by the depository
20 institution applying for permission to convert.

21 (b) The converting depository institution shall submit a plan of conversion as a
22 part of the application to the Administrator. The Administrator may approve it with
23 or without amendment. If he approves the plan, then the plan shall be submitted to
24 the members or stockholders as provided in the next subsection. If he refuses to
25 approve the plan, he shall state his objections in writing and give the converting
26 depository institution an opportunity to amend the plan to obviate such objections or
27 to appeal his decision to the Commission.

28 (c) After lawful notice to the members or stockholders of the converting
29 depository institution and full and fair disclosure, the substance of the plan must be
30 approved by a majority of the total votes which members or stockholders of the
31 institution are eligible and entitled to cast. Such a vote by the members or
32 stockholders may be in person or by proxy. Following the vote of the members or
33 stockholders, the results of the vote certified by an appropriate officer of the
34 converting depository institution shall be filed with the Administrator. The
35 Administrator shall then either approve or disapprove the requested conversion to a
36 State savings bank. After approval of the conversion, the Administrator shall
37 supervise and monitor the conversion process and he shall ensure that the conversion
38 is conducted pursuant to law and the approved plan of conversion.

39 (d) The administrator may promulgate such rules and regulations as may be
40 necessary to govern conversions under this section.

41 "§ 54C-31. Conversion from State to federal charter.

42 Any State savings bank, stock or mutual, organized and operated under the
43 provisions of this Chapter, may convert to a federal charter in accordance with the
44 provisions of the laws and regulations of the United States and with the same force

1 and effect as though originally incorporated under such laws, and the procedure to
2 effect such conversion shall be as follows:

3 (1) The savings bank shall submit a plan of conversion to the
4 Administrator, and he may approve the same, with or without
5 amendment, or refuse to approve the plan. If he approves the
6 plan, then the plan shall be submitted to the members or
7 stockholders as provided in the next subdivision. If he refuses to
8 approve the plan, he shall state his objections in writing and give
9 the converting savings bank an opportunity to amend the plan to
10 obviate such objections or to appeal his decision to the
11 Commission.

12 (2) A meeting of the members or stockholders shall be held upon not
13 less than 15 days' notice to each member or stockholder. Notice
14 can be made either by mailing such to each member or
15 stockholder, postage prepaid, to the last known address or by the
16 board of directors causing to be published once a week for two
17 weeks preceding such meeting, in a newspaper of general
18 circulation in the county where such savings bank has its principal
19 office, a notice of the meeting. It shall be regarded as sufficient
20 notice of the purpose of the meeting if the notice contains
21 substantially the following statement: "The purpose of this meeting
22 is to consider the conversion of this State-chartered savings bank to
23 a federal charter, pursuant to the laws of the United States." An
24 appropriate officer of the savings bank shall make proof by
25 affidavit at such meeting of due service of the notice or call for
26 said meeting.

27 (3) At the meeting of the members or stockholders of such savings
28 bank such members or stockholders may by affirmative vote of a
29 majority of votes or shares present, in person or by proxy, resolve
30 to convert said savings bank to a federal charter. A copy of the
31 minutes of the meeting of the members or stockholders certified by
32 an appropriate officer of the savings bank shall be filed in the
33 office of the Administrator. The said certified copy when so filed
34 shall be prima facie evidence of the holding and the action of the
35 meeting.

36 (4) Within a reasonable time after the receipt of a certified copy of the
37 minutes, the Administrator shall either approve or disapprove the
38 proceedings of the meeting for compliance with the procedure set
39 forth in this section. If the Administrator approves the
40 proceedings, he shall issue a certificate of his approval of the
41 conversion. Such certificate shall be recorded by the savings bank
42 in the office of the Secretary of State. If the Administrator
43 disapproved the proceedings he shall provide a written explanation

1 of his disapproval and notify the savings bank of his disapproval.
2 The savings bank may appeal a disapproval to the Commission.

3 (5) The savings bank shall file an application, in the manner
4 prescribed or authorized by the laws and regulations of the United
5 States, to consummate the conversion to a federal charter. A copy
6 of the charter or authorization issued to the savings bank by the
7 appropriate federal regulatory authority shall be filed with the
8 Administrator. Upon filing with the Administrator the savings
9 bank shall cease to be a State savings bank and shall be a federal
10 depository institution.

11 (6) Whenever any savings bank shall convert to a federal charter it
12 shall cease to be a savings bank under the laws of this State, except
13 that its corporate existence shall be deemed to be extended for the
14 purpose of prosecuting or defending suits by or against it and of
15 enabling it to close its business affairs as a State savings bank and
16 to dispose of and convey its property. At the time when such
17 conversion becomes effective all the property of the State savings
18 bank including all its rights, title and interest in and to all property
19 of whatever kind, whether real, personal or mixed, and things in
20 action, and every right, privilege, interest and asset of any
21 conceivable value or benefit then existing, belonging or pertaining
22 to it, or which would inure to it, shall immediately by act of law
23 and without any conveyance or transfer, and without any further
24 act or deed, be vested in and become the property of the federal
25 depository institution which shall have, hold and enjoy the same in
26 its own right as fully and to the same extent as the same was
27 possessed, held, and enjoyed by the savings bank; and the federal
28 depository institution as of the effective time of such conversion
29 shall succeed to all the rights, obligations, and relations of the State
30 savings bank.

31 **§ 54C-32. Simultaneous charter and ownership conversion.**

32 (a) In the event of a State charter to federal charter conversion, when the form of
33 ownership will also simultaneously be changed from stock to mutual, or from mutual
34 to stock, the conversion shall proceed initially as if it involves only a charter
35 conversion, under G.S. 54B-30. After the savings bank becomes a federal depository
36 institution, then the federal regulatory authority shall govern the continuing
37 conversion of the form of ownership of such newly converted depository institution.

38 (b) In the event of a federal charter to State charter conversion, when the form of
39 ownership will also simultaneously be changed from stock to mutual or from mutual
40 to stock, the conversion shall proceed initially as if it involves only a charter
41 conversion under G.S. 54C-31. After the federal depository institution becomes a
42 State savings bank, the provisions of G.S. 54C-33 or G.S. 54C-34 shall govern the
43 continuing conversion of the form of ownership of such newly converted savings
44 bank.

1 (c) The provisions of this section shall not apply to any simultaneous charter and
2 ownership conversion accomplished in conjunction with a merger under the
3 provisions of G.S. 54C-40.

4 **"§ 54C-33. Conversion of mutual to stock savings bank.**

5 (a) Any mutual savings bank may convert from mutual to the stock form of
6 ownership as provided in this section.

7 (b) A mutual savings bank may apply to the Administrator for permission to
8 convert to a stock savings bank and for certification of appropriate amendments to
9 the savings bank's certificate of incorporation. Upon receipt of an application to
10 convert from mutual to stock form the Administrator shall examine all facts
11 connected with the requested conversion. The expenses and cost of such
12 examination, monitoring and supervision shall be paid by the savings bank applying
13 for permission to convert.

14 (c) The savings bank shall submit a plan of conversion as a part of the application
15 to the Administrator. The Administrator may approve it with or without
16 amendment, if it appears that:

- 17 (1) After conversion the savings bank will be in sound financial
18 condition and will be soundly managed;
- 19 (2) The conversion will not impair the capital of the savings bank nor
20 adversely affect the savings bank's operations;
- 21 (3) The conversion will be fair and equitable to the members of the
22 savings bank and no person whether member, employee or
23 otherwise, will receive any inequitable gain or advantage by reason
24 of the conversion;
- 25 (4) The savings bank services provided to the public by the savings
26 bank will not be adversely affected by the conversion;
- 27 (5) The substance of the plan has been approved by a vote of two-
28 thirds of the board of directors of the savings bank;
- 29 (6) All shares of stock issued in connection with the conversion are
30 offered first to the members of the savings bank;
- 31 (7) All stock shall be offered to members of the savings bank and
32 others in prescribed amounts and otherwise pursuant to a formula
33 and procedure which is fair and equitable and will be fairly
34 disclosed to all interested persons;
- 35 (8) The plan provides a statement as to whether stockholders shall
36 have preemptive rights to acquire additional or treasury shares of
37 the savings bank.

38 If the Administrator approves the plan, then the plan shall be submitted to the
39 members as provided in the next subsection. If he refuses to approve the plan, the
40 Administrator shall state his objections in writing and give the converting savings
41 bank an opportunity to amend the plan to obviate such objections or to appeal his
42 decision to the Commission.

43 (d) After lawful notice to the members of the savings bank and full and fair
44 disclosure, the substance of the plan must be approved by a majority of the total votes

1 which members of the savings bank are eligible and entitled to cast. Such a vote by
2 the members may be in person or by proxy. Following the vote of the members, the
3 results of the vote certified by an appropriate officer of the savings bank shall be filed
4 by the Administrator. The Administrator shall then either approve or disapprove the
5 requested conversion. After approval of the conversion, the Administrator shall
6 supervise and monitor the conversion process and he shall ensure that the conversion
7 is conducted pursuant to law and the savings bank's approved plan of conversion.

8 (e) The Administrator may promulgate such rules and regulations as may be
9 necessary to govern conversions; provided, however, that such rules and regulations
10 as may be promulgated by the Administrator shall be equal to or exceed the
11 requirements for conversion, if any, imposed by the federal insurer of deposit
12 accounts.

13 **"§ 54C-34. Conversion of stock savings bank to mutual savings bank.**

14 Any stock savings bank organized and operating under the provisions of this
15 Chapter may, subject to the approval of the Administrator, convert to a mutual
16 savings bank under the provisions of this section. The Administrator may
17 promulgate rules and regulations governing the conversion of stock savings banks to
18 mutual savings banks. Such rules and regulations shall include, but shall not be
19 limited to requirements that:

- 20 (1) The conversion neither impair the capital of the converting savings
21 bank nor adversely affect its operations;
22 (2) The conversion shall be fair and equitable to all stockholders of
23 the converting savings bank;
24 (3) The public shall not be adversely affected by the conversion;
25 (4) Conversion of a savings bank shall be accomplished only pursuant
26 to a plan approved by the Administrator. Said plan must have
27 been approved by an affirmative vote of two-thirds of the members
28 of the board of directors of the converting savings bank, after a full
29 and fair disclosure to the stockholders, by an affirmative vote of a
30 majority of the total votes which stockholders of the savings bank
31 are eligible and entitled to cast;
32 (5) The plan of conversion provides that:
33 a. Deposit accounts be issued in connection with the
34 conversion to the stockholders of the converting savings
35 bank;
36 b. A uniform date be fixed for the determination of the
37 stockholders to whom, and the amount to each stockholder
38 of which, deposit accounts shall be made available;
39 c. Deposit accounts so made available to stockholders be based
40 upon a fair and equitable formula approved by the
41 Administrator and fully and fairly disclosed to the
42 stockholders of the converting savings bank.

43 **"§ 54C-35. Merger of like savings banks.**

1 Any two or more mutual savings banks or any two or more stock savings banks
2 organized and operating, may merge or consolidate into a single savings bank. The
3 procedure to effect such merger shall be as follows:

4 (1) The directors, or a majority of them, of such savings banks as
5 desire to merge, may, at separate meetings, enter into a written
6 agreement of merger signed by them and under the corporate seals
7 of the respective savings banks specifying each savings bank to be
8 merged and the savings bank which is to receive into itself the
9 merging savings bank or banks, and prescribing the terms and
10 conditions of the merger and the mode of carrying it into effect.
11 The merger agreement may provide such other provisions with
12 respect to the merger as appear necessary or desirable, or as the
13 Administrator may require to enable him to discharge his duties
14 with respect to such merger.

15 (2) A meeting of the members or stockholders of each of the savings
16 banks shall be held separately upon written notice of not less than
17 15 days to members or stockholders of each savings bank. The
18 notice shall specify the time, place, and purpose for the calling of
19 the meeting. Notice shall be made by personal service or postage
20 prepaid mail to the last address of each member or stockholder
21 appearing upon the records of the savings bank and by publication
22 of notice at least once a week for two weeks preceding the meeting
23 in one or more newspapers of general circulation in the county or
24 counties where each savings bank has its principal or a branch
25 office, or in a newspaper of general circulation in an adjoining
26 county if none is available in the county. An appropriate officer of
27 the savings bank shall make proof by affidavit at such meeting of
28 the due service of the notice or call for said meeting.

29 (3) At separate meetings of the members or stockholders of the
30 respective savings banks, the members or stockholders may adopt,
31 by an affirmative vote of a majority of the votes or shares present,
32 in person or by proxy, a resolution to merge into a single savings
33 bank upon the terms of the merger agreement as shall have been
34 agreed upon by the directors of the respective savings banks and as
35 approved by the Administrator. Upon the adoption of the
36 resolution, a copy of the minutes of the proceedings of the
37 meetings of the members or stockholders of the respective savings
38 banks certified by an appropriate officer of the merging savings
39 banks, shall be filed in the office of the Administrator. Within 15
40 days after the receipt of a certified copy of the minutes of such
41 meetings the Administrator shall either approve or disapprove the
42 proceedings for compliance with this section. If the proceedings
43 are approved by him, he shall issue a certificate of his approval of
44 the merger. The certificate shall be filed and recorded in the

1 office of the Secretary of State. When the certificate is so filed, the
2 merger agreement shall take effect according to its terms and shall
3 be binding upon all the members or stockholders of the savings
4 banks merging, and it shall be deemed to be the act of merger of
5 such constituent savings banks under the laws of this State, and the
6 certificate or certified copy thereof shall be evidence of the
7 agreement and act of merger of the savings banks and the
8 observance and performance of all acts and conditions necessary to
9 have been observed and performed precedent to such merger.
10 Within 60 days after its receipt from the Secretary of State, the
11 certified copy of the certificate shall be filed with the register of
12 deeds of the county or counties in which the respective savings
13 banks so merged have recorded their original certificates of
14 incorporation. Failure to so file shall only subject the savings bank
15 to a penalty of one hundred dollars (\$100.00) to be collected by
16 the Secretary of State. If the Administrator disapproved the
17 proceedings, he shall issue a written statement of the reasons for
18 his disapproval and notify the savings banks to that effect. Such
19 disapproval may be appealed by the savings banks to the
20 Commission.

21 (4) Upon the merger of any savings bank, as above provided into
22 another:

23 a. Its corporate existence shall be merged into that of the
24 receiving savings bank; and all its right, title, interest in and
25 to all property of whatsoever kind, whether real, personal or
26 mixed, and things in action, and every right, privilege,
27 interest or asset of any conceivable value or benefit then
28 existing belonging or pertaining to it, or which would inure
29 to it under an unmerged existence, shall immediately by act
30 of law and without any conveyance or transfer, and without
31 any further act or deed, be vested in and become the
32 property of such receiving savings bank which shall have,
33 hold, and enjoy the same in its own right as fully and to the
34 same extent as if the same were possessed, held, or enjoyed
35 by the savings banks so merged; and such receiving savings
36 bank shall absorb fully and completely the savings bank or
37 banks so merged.

38 b. Its rights, liabilities, obligations, and relations to any person
39 shall remain unchanged and the savings bank into which it
40 has been merged shall, by the merger, succeed to all the
41 relations, obligations, and liabilities as though it had itself
42 assumed or incurred the same. No obligation or liability of
43 a member, customer, or stockholder in a savings bank which
44 is a party to the merger shall be affected by the merger, but

1 obligations and liabilities shall continue as they existed
2 before the merger, unless otherwise provided in the merger
3 agreement.

4 c. A pending action or other judicial proceeding to which any
5 savings bank that shall be so merged is a party, shall not be
6 deemed to have abated or to have discontinued by reason of
7 the merger, but may be prosecuted to final judgement,
8 order, or decree in the same manner as if the merger had
9 not been made; or the receiving savings bank may be
10 substituted as a party to such action or proceeding, and any
11 judgement, order, or decree may be rendered for or against
12 it that might have been rendered for or against such other
13 savings bank if the merger had not occurred.

14 (5) Notwithstanding any other provision of this section, the
15 Administrator may waive any or all of the foregoing requirements
16 upon finding that such waiver would be in the best interest of the
17 members or stockholders of the merging savings banks.

18 **"§ 54C-36. Merger of savings banks where ownership is converted.**

19 (a) Any two or more State mutual savings banks may merge to form a single State
20 stock savings bank in separate merger-conversion proceedings or in simultaneous
21 merger-conversion proceedings.

22 (b) Any two or more State stock savings banks may merge to form a single State
23 mutual savings bank in separate merger-conversion proceedings or in simultaneous
24 merger-conversion proceedings.

25 (c) The Administrator may promulgate rules and regulations to facilitate the
26 transition from two or more savings banks to a single savings bank under a new form
27 of ownership.

28 **"§ 54C-37. Merger of mutual and stock savings banks.**

29 (a) Any two or more savings banks, when one or more is mutually owned and one
30 or more is stock owned, may merge to form either a mutual or stock savings bank in
31 separate conversion-merger proceedings or in simultaneous conversion-merger
32 proceedings.

33 (b) The Administrator may promulgate rules and regulations to facilitate the
34 merger of mutual and stock savings banks.

35 **"§ 54C-38. Simultaneous merger and conversion.**

36 (a) Any combination of associations and State savings banks may merge to form
37 either an association or a State savings bank.

38 (b) The Administrator shall promulgate rules and regulations to facilitate the
39 merger of associations and State savings banks.

40 **"§ 54C-39. Merger of federal charters with State savings banks.**

41 (a) Any two or more depository institutions, when one or more is a State savings
42 bank and one or more is a federal depository institution operating in North Carolina,
43 may merge under either a State savings bank charter or a federal charter.

1 (b) The Administrator shall promulgate rules and regulations to facilitate the
2 merger of federal depository institutions and State savings banks.

3 "§ 54C-40. Voluntary dissolution by directors.

4 A State savings bank may be voluntarily dissolved by a majority vote of the board
5 of directors when substantially all of the assets have been sold for the purpose of
6 terminating the business of the savings bank or as provided in G.S. 55-14-01 and
7 when a certificate of dissolution is recorded in the manner required by this Chapter
8 for the recording of certificates of incorporation.

9 "§ 54C-41. Voluntary dissolution by stockholders or members.

10 At any annual or special meeting called for such purpose, a savings bank may, by
11 an affirmative vote in person or by proxy of at least two-thirds of the total number of
12 shares or votes which all members or stockholders of the association are entitled to
13 cast, resolve to dissolve and liquidate the savings bank and adopt a plan of voluntary
14 dissolution. Upon adoption of such resolution and plan of voluntary dissolution, the
15 members or stockholders shall proceed to elect not more than three liquidators who
16 shall post bond as required by the Administrator. The liquidators shall have full
17 power to execute the plan; and the procedure thereafter shall be as follows:

18 (1) A copy of the resolution certified by an appropriate officer of the
19 savings bank together with the minutes of the meeting of members
20 or stockholders, the plan of liquidation, and an itemized statement
21 of the savings bank's assets and liabilities sworn to by a majority of
22 its board of directors, shall be filed with the Administrator. The
23 minutes of the meeting of members or stockholders shall be
24 certified by an appropriate officer of the association, and shall set
25 forth the notice given and the time of mailing thereof, the vote on
26 the resolution and the total number of shares or votes which all
27 members of the savings bank were entitled to cast thereon, and the
28 names of the liquidators elected.

29 (2) If the Administrator finds that the proceedings are in accordance
30 with the provisions of this Chapter, and that the plan of liquidation
31 is not unfair to any person affected, he shall attach his certificate of
32 approval to the plan and shall forward one copy to the liquidators
33 and one copy to the savings bank's federal deposit account
34 insurance corporation. Once the Administrator has approved the
35 resolution and the plan of liquidation it shall thereafter be
36 unlawful for such savings bank to accept any additional deposit
37 accounts or additions to deposit accounts or make any additional
38 loans, but all its income and receipts in excess of actual expenses
39 of liquidation of the savings bank shall be applied to the discharge
40 of its liabilities.

41 (3) The liquidator or liquidators so appointed shall be paid a
42 reasonable compensation by the liquidating savings bank subject to
43 the approval of the Administrator.

1 "§ 54C-52. Supervision.

2 (a) The Administrator of the Savings Institutions Division of the State is
3 empowered and directed to perform the duties and exercise the powers as to savings
4 banks organized or operated under this Chapter except as otherwise provided herein.

5 (b) The Savings Institutions Commission is vested with full power and authority to
6 review, approve, disapprove, or modify any action taken by the Administrator in the
7 exercise of the powers, duties, and functions granted him by this Chapter.

8 "§ 54C-53. Power of Administrator to promulgate rules and regulations; reproduction
9 of records.

10 (a) The Administrator shall have the right, and is empowered, to promulgate
11 rules, instructions, and regulations as may be necessary to the discharge of his duties
12 and powers as to savings banks for the supervision and regulation of savings banks,
13 and for the protection of the public investing in savings banks.

14 (b) Without limiting the generality of the foregoing paragraph, rules, instruction,
15 and regulations may be promulgated with respect to:

- 16 (1) Reserve requirements;
- 17 (2) Stock ownership and dividends;
- 18 (3) Stock transfers;
- 19 (4) Incorporators, stockholders, directors, officers, and employees of a
20 savings bank;
- 21 (5) Bylaws;
- 22 (6) The operation of savings banks;
- 23 (7) Deposit accounts, bonus plans, and contracts for savings programs;
- 24 (8) Loans and loan expenses;
- 25 (9) Investments;
- 26 (10) Forms and definitions;
- 27 (11) Types of financial records to be maintained by savings banks;
- 28 (12) Retention periods of various financial records;
- 29 (13) Internal control procedures of savings banks;
- 30 (14) Conduct and management of savings banks;
- 31 (15) Chartering and branching;
- 32 (16) Liquidations;
- 33 (17) Mergers;
- 34 (18) Conversions;
- 35 (19) Reports which may be required by the Administrator;
- 36 (20) Conflicts of interest;
- 37 (21) Service corporations; and
- 38 (22) Holding companies.

39 (c) Any savings bank may cause any or all of its records to be recorded, copied,
40 or reproduced by any photographic, photostatic or miniature photographic process
41 which correctly, accurately, permanently copies, reproduces or forms a medium for
42 copying or reproducing the original record on a film or other durable material.

43 (d) Any such photographic, photostatic or miniature photographic copy or
44 reproduction shall be deemed to be an original record in all courts and administrative

1 agencies for the purpose of its admissibility in evidence. A facsimile, exemplification
2 or certified copy of any such photographic copy or reproduction shall, for all
3 purposes, be deemed a facsimile, exemplification, or certified copy of the original
4 record.

5 (e) The provisions of this section with reference to the retention and disposition of
6 records shall apply to any federal savings bank operating in North Carolina unless in
7 conflict with regulations prescribed by its federal regulatory authority.

8 **"§ 54C-54. Examinations by Administrator; report.**

9 (a) If at any time the Administrator deems it prudent, it shall be his duty to
10 examine and investigate everything relating to the business of a State savings bank or
11 a holding company thereof, and to appoint a suitable and competent person to make
12 such investigation. The investigator shall file with the Administrator a full report of
13 his finding in such case, including in his report any violation of law or any
14 unauthorized or unsafe practices of the savings bank disclosed by his examination.

15 (b) The Administrator shall furnish a copy of the report to the savings bank
16 examined and may, upon request, furnish a copy of or excerpts from the report to the
17 insurer of accounts.

18 (c) No savings bank may willfully delay or willfully obstruct an examination in
19 any fashion. Any person failing to comply with this subsection shall be guilty of a
20 misdemeanor.

21 (d) No person having in his possession or control any books, accounts, or papers
22 of any State savings bank shall refuse to exhibit same to the Administrator or his
23 agents on demand, or shall knowingly or willingly make any false statement in regard
24 to the same. Any person failing to comply with this subsection shall be guilty of a
25 misdemeanor.

26 **"§ 54C-55. Supervision and examination fees.**

27 (a) Every State savings bank, including savings banks in process of voluntary
28 liquidation, or a holding company thereof, shall pay into the office of the
29 Administrator each July a supervisory fee. Examination fees shall be paid promptly
30 upon an association's receipt of the examination billing. The Administrator, subject
31 to the advice and consent of the Commission, shall, on or before June 1 of each year:

32 (1) Determine and fix the scale of supervisory and examination fees to
33 be assessed and collected during the next fiscal year;

34 (2) Determine and fix the amount of the fee and set the fee collection
35 schedule for the fees to be assessed to and collected from
36 applicants to defray the cost of processing their charter, branch,
37 merger, conversion, holding company acquisition, and name
38 change applications.

39 (b) All funds and revenue collected by the Division under the provisions of this
40 section and the provisions of all other sections of this Chapter which authorize the
41 collection of fees and other funds shall be deposited with the State Treasurer of
42 North Carolina and expended under the terms of the Executive Budget Act, solely to
43 defray expenses incurred by the office of the Administrator in carrying out its
44 supervisory and auditing functions.

1 (c) Notwithstanding any of the provisions of subsections (a) and (b) of this section,
2 whenever the Administrator under the provisions of G.S. 54C-54 appoints a suitable
3 and competent person, other than a person employed by the Administrator's office,
4 to make an examination and investigation of the business of a State savings bank, all
5 costs and expenses relative to such examination and investigation shall be paid by
6 such savings bank.

7 "§ 54C-56. Prolonged audit, examination or revaluation; payment of costs.

8 (a) If, in the opinion of the Administrator, an examination conducted under the
9 provisions of G.S. 54C-55 fails to disclose the complete financial condition of a
10 savings bank, he may in order to ascertain its complete financial condition:

11 (1) Make an extended audit or examination of the savings bank or
12 cause such an audit or examination to be made by an independent
13 auditor;

14 (2) Make an extended revaluation of any of the assets or liabilities of
15 the savings bank or cause an independent appraiser to make such
16 revaluation.

17 (b) The Administrator shall collect from the savings bank a reasonable sum for
18 actual or necessary expenses of such an audit, examination, or revaluation.

19 "§ 54C-57. Administrator to have right of access to books and records of the savings
20 bank; right to issue subpoenas, administer oaths, examine witnesses.

21 (a) The Administrator and his agents:

22 (1) Shall have free access to all books and records of a savings bank,
23 or a service corporation or holding company thereof, that relate to
24 its business, and the books and records kept by an officer, agent, or
25 employee relating to or upon which any record is kept;

26 (2) May subpoena witnesses and administer oaths or affirmations in
27 the examination of any director, officer, agent, or employee of a
28 savings bank, or a service corporation or holding company thereof
29 or of any other person in relation of its affairs, transactions, and
30 conditions;

31 (3) May require the production of records, books, papers, contracts,
32 and other documents; and

33 (4) May order that improper entries be corrected on the books and
34 records of a savings bank.

35 (b) The Administrator may issue subpoenas **duces tecum**.

36 (c) If a person fails to comply with a subpoena so issued or a party or witness
37 refuses to testify on any matters, a court of competent jurisdiction, on the application
38 of the Administrator, shall compel compliance by proceedings for contempt as in the
39 case of disobedience of the requirements of a subpoena issued from such court or a
40 refusal to testify in such court.

41 "§ 54C-58. Test appraisals of collateral for loans; expense paid.

42 (a) The Administrator may direct the making of test appraisals of real estate and
43 other collateral securing loans made by savings banks doing business in this State,
44 employ competent appraisers, or prescribe a list from which competent appraisers

1 may be selected, for the making of such appraisals by the Administrator, and or any
2 and all other acts incident to the making of such test appraisals.

3 (b) In lieu of causing such appraisals to be made, the Administrator may accept
4 an appraisal caused to be made by the insurer of accounts.

5 (c) The expense and cost of test appraisals made pursuant to this section shall be
6 defrayed by the savings bank subjected to such test appraisals, and each savings bank
7 doing business in this State shall pay all reasonable costs and expenses of such test
8 appraisals when it shall be directed.

9 **"§ 54C-59. Relationship of savings banks with the Savings Institution Division.**

10 (a) Except as provided by subsection (b) of this section, a savings bank or any
11 director, officer, employee, or representative thereof shall not grant or give to the
12 Administrator or to any employee of the Division, or to their spouses, any loan or
13 gratuity, directly or indirectly.

14 (b) Neither the Administrator nor any employee of the Division shall:

15 (1) Hold an office or position in any State savings bank or exercise
16 any right to vote on any State savings bank matter by reason of
17 being a member of the savings bank;

18 (2) Be interested, directly or indirectly, in any savings bank organized
19 under the laws of this State; or

20 (3) Undertake any indebtedness as a borrower, directly or indirectly,
21 or act as endorser, surety or guarantor, or sell or otherwise dispose
22 of any loan or investment to any savings bank organized under the
23 laws of this State.

24 (c) Notwithstanding subsection (b) of this section, the Administrator or any
25 employee of the Division may be a deposit account holder and receive earnings on
26 such account and may receive a loan secured by the deposit account.

27 (d) If the Administrator or any employee of the Division has any prohibited right
28 or interest in a savings bank, either directly or indirectly, at the time of his
29 appointment, he shall dispose of it within 60 days after the date of his appointment or
30 employment. If the Administrator or any employee of the Division is indebted as
31 borrower directly or indirectly, or is an endorser, surety or guarantor on a note, at
32 the time of his appointment or employment, he may continue in such capacity until
33 such loan is paid off.

34 (e) If the Administrator or any employee of the Division has a loan or other note
35 acquired by a State savings bank through the secondary market, he may continue
36 with the debt until such loan or note is paid off.

37 **"§ 54C-60. Confidential information.**

38 (a) The following records or information of the Commission, the Administrator or
39 the agent(s) of either shall be confidential and shall not be disclosed:

40 (1) Information obtained or compiled in preparation of or anticipation
41 of, or during an examination, audit, or investigation of any
42 association;

43 (2) Information reflecting the specific collateral given by a named
44 borrower, the specific amount of stock owned by a named

1 stockholder, or specific deposit accounts held by a named member
2 or customer;

3 (3) Information obtained, prepared, or compiled during or as a result
4 of an examination, audit, or investigation of any savings bank by an
5 agency of the United States, if the records would be confidential
6 under federal law or regulation;

7 (4) Information and reports submitted by savings banks to federal
8 regulatory agencies, if the records or information would be
9 confidential under federal law or regulation;

10 (5) Information and records regarding complaints from the public
11 received by the Division which concern savings banks when the
12 complaint would or could result in an investigation, except to the
13 management of those savings banks;

14 (6) Any other letters, reports, memoranda, recordings, charts or other
15 documents or records which would disclose any information of
16 which disclosure is prohibited in this subsection.

17 (b) A court of competent jurisdiction may order the disclosure of specific
18 information.

19 (c) The information contained in an application shall be deemed to be public
20 information. Disclosure shall not extend to the financial statement of the
21 incorporators nor to any further information deemed by the Administrator to be
22 confidential.

23 (d) Nothing in this section shall prevent the exchange of information relating to
24 savings banks and the business thereof with the representatives of the agencies of this
25 State, other states, or of the United States, or with reserve or insuring agencies for
26 savings banks. The private business and affairs of an individual or company shall not
27 be disclosed by any person employed by the Division, any member of the
28 Commission, or by any person with whom information is exchanged under the
29 authority of this subsection.

30 (e) Any official or employee violating this section shall be liable to any person
31 injured by disclosure of such confidential information for all damages sustained
32 thereby. Penalties provided shall not be exclusive of other penalties.

33 **§ 54C-61. Annual license fees.**

34 All state savings banks shall pay an annual license fee set by the Administrator,
35 subject to the advice and consent of the Commission. Such license fee shall be used
36 to defray the expenses incurred by the Division in supervising State savings banks.
37 The Administrator may license each State savings bank upon receipt of the license
38 fee and filing of an application in such form as the Administrator may prescribe.

39 **§ 54C-62. Statement filed by savings bank; fees.**

40 Every State savings bank shall file in the office of the Administrator, on or before
41 the first day of February in each year, in such form as the Administrator shall
42 prescribe, a statement of the business standing and financial condition of such savings
43 bank on the preceding 31st day of December, signed and sworn to by the secretary of
44 the savings bank before a notary public. The statement shall be accompanied by a

1 about to engage in, any unsafe or unsound business practice, or unfair and
2 discriminatory practice or any violation of this Chapter, or any other law, rule,
3 regulation, or order, a cease and desist order shall be issued. The Commission may
4 issue a temporary cease and desist order to be effective for 15 days and may be
5 extended once for a period of 15 days.

6 (b) If any person or State savings bank is engaging in, has engaged in, or is about
7 to engage in any unsafe or unsound practice in conducting the savings bank's
8 business, or any violation of the Chapter or of any other law, rules, regulation, order,
9 or condition imposed in writing by the Administrator, and the Administrator has
10 determined that immediate corrective action is required, the Administrator may issue
11 a temporary cease and desist order. A temporary cease and desist order shall be
12 effective immediately upon issuance for a period of 15 days, and may be extended
13 once for a period of 15 days. Such an order shall state its duration on its face and
14 the words, 'Temporary Cease and Desist Order.' A hearing before the Commission
15 shall be held within the time that the order remains effective, at which time a
16 temporary order may be dissolved or made permanent.

17 **"§ 54C-77. Civil penalties; State savings banks.**

18 (a) Except as otherwise provided in this Article, any savings bank which is found
19 to have violated any provision of this Article may be ordered to forfeit and pay a
20 civil penalty of up to twenty thousand dollars (\$20,000). Any savings bank which is
21 found to have violated or failed to comply with any cease and desist order issued
22 under the authority of this Article may be ordered to forfeit or pay a civil penalty of
23 up to twenty thousand dollars (\$20,000) for each day that the violation or failure to
24 comply continues.

25 (b) To enforce the provisions of this section, the Administrator is authorized to
26 assess such a penalty and to appear in a court of competent jurisdiction and to move
27 the court to order payment of the penalty. Prior to the assessment of the penalty, a
28 hearing shall be held by the Administrator which shall comply with the provisions of
29 Article 3A of Chapter 150B of the General Statutes.

30 (c) If the Administrator determines that, as a result of a violation of any provision
31 of this Article, or of a failure to comply with any cease and desist order issued under
32 the authority of this Article, a situation exists requiring immediate corrective action,
33 the Administrator may impose the civil penalty in this section on the savings bank
34 without a prior hearing, and said penalty shall be effective as of the date of notice to
35 the association. Imposition of such penalty may be directly appealed to the Wake
36 County Superior Court.

37 (d) Nothing in this section shall prevent anyone damaged by a State savings bank
38 from bringing a separate cause of action in a court of competent jurisdiction.

39 **"§ 54C-78. Civil penalties; directors, officers and employees.**

40 (a) Any person, whether a director, officer or employee who is found to have
41 violated any provision of this Article, whether willfully or as a result of gross
42 negligence, gross incompetency, or recklessness may be ordered to forfeit and pay a
43 civil penalty of up to five thousand dollars (\$5,000) per violation. Any person who is
44 found to have violated or failed to comply with any cease and desist order issued

1 under the authority of this Article, may be ordered to forfeit and pay a civil penalty
2 of up to five thousand dollars (\$5,000) per violation for each day that the violation of
3 failure to comply continues.

4 (b) To enforce the provisions of this section, the Administrator is authorized to
5 assess such a penalty and to appear in a court of competent jurisdiction and to move
6 the court to order payment of the penalty. Prior to the assessment of the penalty, a
7 hearing shall be held by the Administrator which shall comply with the provisions of
8 Article 3A of Chapter 150B of the General Statutes.

9 (c) Whenever the Administrator shall determine that an emergency exists which
10 requires immediate corrective action, the Administrator, either before or after
11 instituting any other action or proceeding authorized by this Article, may request the
12 Attorney General to institute a civil action in a court of competent jurisdiction, in the
13 name of the State upon the relation of the Administrator seeking injunctive relief to
14 restrain or enjoin the violation or threatened violation of this Article and for such
15 other and further relief as the court may deem proper. Instituting an action for
16 injunctive relief shall not relieve any party to such proceedings from any civil or
17 criminal penalty prescribed for violation of this Article.

18 (d) Nothing in this section shall prevent anyone damaged by a director, officer or
19 employee of a State savings bank from bringing a separate cause of action in a court
20 of competent jurisdiction.

21 **"§ 54C-79. Criminal penalties.**

22 (a) The provisions of this section shall in no event extend to persons who are
23 found to have acted only with gross negligence, simple negligence, recklessness or
24 incompetence.

25 (b) In addition to any of the other penalties or remedies provided by this Article,
26 the following shall be deemed to be misdemeanors and shall be punishable as
27 provided in Chapter 14 of the North Carolina General Statutes:

28 (1) The willful or knowing violation of the provisions of this Article by
29 any employee of the Division.

30 (2) The willful or knowing violation of a cease and desist order which
31 has become final in that no further administrative or judicial
32 appeal is available.

33 (c) In addition to any of the other penalties or remedies provided by this Article,
34 the willful omission, making, or concurrence in making or publishing a written
35 report, exhibit, or entry in a financial statement on the books of the association,
36 which contains a material statement known to be false shall be deemed to be a
37 misdemeanor and shall be punishable as provided in Chapter 14 of the North
38 Carolina General Statutes. For purposes of this section, 'material' shall mean 'so
39 substantial and important as to influence a reasonable and prudent businessman or
40 investor.'

41 (d) The Administrator is authorized to enforce this section in a court of
42 competent jurisdiction.

43 **"§ 54C-80. Primary jurisdiction.**

1 Whenever an agency of the United States government shall defer to the
2 Administrator, or notify the Administrator of pending action against a savings bank
3 chartered by this State or fail to exercise its authority over any State- or federally-
4 chartered savings bank doing business in this state, the Administrator shall have the
5 authority to exercise jurisdiction over the savings bank.

6 "§ 54C-81. Supervisory control.

7 (a) Whenever the Administrator determines that a savings bank is conducting its
8 business in an unsafe or unsound manner or in any fashion which threatens the
9 financial integrity or sound operation of the savings bank, the Administrator may
10 serve a notice of charges on the savings bank, requiring it to show cause why it
11 should not be placed under supervisory control. Such notice of charges shall specify
12 the grounds for supervisory control, and set the time and place for a hearing. A
13 hearing before the Commission pursuant to such notice shall be held within 15 days
14 after issuance of the notice of charges, and shall comply with the provisions of Article
15 3A of Chapter 150B of the General Statutes.

16 (b) If, after the hearing provided above, the Commission determines that
17 supervisory control of the savings bank is necessary to protect the savings bank's
18 members, customers, stockholders or creditors, or the general public, the
19 Administrator shall issue an order taking supervisory control of the savings bank. An
20 appeal may be filed in the Wake County Superior Court.

21 (c) If the order taking supervisory control becomes final, the Administrator may
22 appoint an agent to supervise and monitor the operations of the savings bank during
23 the period of supervisory control. During the period of supervisory control, the
24 savings bank shall act in accordance with such instructions and directions as may be
25 given by the Administrator directly or through his supervisory agent and shall not act
26 or fail to act except when to do so would violate an outstanding cease and desist
27 order.

28 (d) Within 180 days of the date the order taking supervisory control becomes
29 final, the Administrator shall issue an order approving a plan for the termination of
30 supervisory control. The plan may provide for:

- 31 (1) The issuance by the savings bank of capital stock;
- 32 (2) The appointment of one or more officers and/or directors;
- 33 (3) The reorganization, merger, or consolidation of the savings bank;
- 34 (4) The dissolution and liquidation of the savings bank.

35 The order approving the plan shall not take effect for 30 days during which time
36 period an appeal may be filed in the Wake County Superior Court.

37 (e) The costs incident to this proceeding shall be paid by the savings bank,
38 provided such costs are found to be reasonable.

39 (f) For the purposes of this section, an order shall be deemed final if:

- 40 (1) No appeal is filed within the specific time allowed for the appeal,
- 41 or
- 42 (2) After all judicial appeals are exhausted.

43 "§ 54C-82. Removal of directors, officers and employees.

1 (a) If, in the Administrator's opinion, one or more directors, officers or employees
2 of any savings bank has participated in or consented to any violation of this Chapter,
3 or any other law, rule, regulation or order, or any unsafe or unsound business
4 practice in the operation of any savings bank; or any insider loan not specifically
5 authorized by or pursuant to this Chapter; or any repeated violation of or failure to
6 comply with any savings bank's bylaws, the Administrator may serve a written notice
7 of charges upon the director, officer and employee in question, and the savings bank,
8 stating his intent to remove said director, officer or employee. Such notice shall
9 specify the conduct and place for the hearing before the Commission to be held. A
10 hearing shall be held no earlier than 15 days and no later than 30 days after the
11 notice of charges is served, and it shall comply with the provisions of Article 3A of
12 Chapter 150B of the General Statutes. If, after the hearing, the Commission
13 determines that the charges asserted have been proven by a preponderance of the
14 evidence, the Administrator may issue an order removing the director, officer or
15 employee in question. Such an order shall be effective upon issuance and may
16 include the entire board of directors or all of the officers of the savings bank.

17 (b) If it is determined that any director, officer or employee of any savings bank
18 has knowingly participated in or consented to any violation of this Chapter, or any
19 other law, rule, regulation or order, or engaged in any unsafe or unsound business
20 practice in the operation of any savings bank, or any repeated violation of or failure
21 to comply with any savings bank's bylaws, and that as a result, a situation exists
22 requiring immediate corrective action, the Administrator may issue an order
23 temporarily removing such person or persons pending a hearing. Such an order shall
24 state its duration of its face and the words, 'Temporary Order of Removal,' and shall
25 be effective upon issuance, for a period of 15 days, and may be extended once for a
26 period of 15 days. A hearing must be held within 10 days of the expiration of a
27 temporary order, or any extension thereof, at which time a temporary order may be
28 dissolved or converted to a permanent order.

29 (c) Any removal pursuant to subsections (a) or (b) of this section shall be effective
30 in all respects as if such removal had been made by the board of directors and the
31 members or the stockholders of the savings bank in question.

32 (d) Without the prior written approval of the Administrator, no director, officer or
33 employee permanently removed pursuant to this section shall be eligible to be
34 elected, reelected or appointed to any position as a director, officer or employee of
35 that savings bank, nor shall such a director, officer or employee be eligible to be
36 elected to or retain a position as a director, officer or employee of any other State
37 savings bank.

38 **"§ 54C-83. Involuntary liquidation.**

39 (a) The Administrator with prior approval of the Commission may take custody of
40 the books, records and assets of every kind and character of any savings bank
41 organized and operated under the provisions of this Chapter for any of the purposes
42 hereinafter enumerated if it reasonably appears from examinations or from reports
43 made to the Administrator that:

- 1 (1) The directors, officers, or liquidators have neglected, failed or
2 refused to take such action which the Administrator may deem
3 necessary for the protection of the savings bank or have impeded
4 or obstructed an examination; or
- 5 (2) The net worth of the savings bank is impaired to the extent that
6 the realizable value of its assets is insufficient to pay in full its
7 creditors and holders of deposit accounts; or
- 8 (3) The business of the savings bank is being conducted in a
9 fraudulent, illegal or unsafe manner, or that the savings bank is in
10 an unsafe or unsound condition to transact business; (any savings
11 bank which, except as authorized in writing by the Administrator,
12 fails to make full payment of any withdrawal when due is in an
13 unsafe or unsound condition to transact business, notwithstanding
14 such provisions of the certificate of incorporation or such statutes
15 or regulations with respect to payment of withdrawals in event a
16 savings bank does not pay all withdrawals in full); or
- 17 (4) The officers, directors, or employees have assumed duties or
18 performed acts in excess of those authorized by statute or
19 regulation or charter, or without supplying the required bond; or
- 20 (5) The savings bank has experienced a substantial dissipation of assets
21 or earnings due to any violation or violation of statute or
22 regulation, or due to any unsafe or unsound practice or practices;
23 or
- 24 (6) The savings bank is insolvent, or is in imminent danger of
25 insolvency or has suspended its ordinary business transactions due
26 to insufficient funds; or
- 27 (7) The savings bank is unable to continue operations.

28 (b) Unless the Administrator finds that such an emergency exists which may result
29 in loss to members, deposit account holders, stockholders, or creditors, and which
30 requires that he take custody immediately, he shall first give written notice to the
31 directors and officers specifying the conditions criticized and allowing a reasonable
32 time in which corrections may be made before a receiver shall be appointed as
33 outlined in subsection (d) below.

34 (c) The purposes for which the Administrator may take custody of a savings bank
35 include, but are not limited to, examination or further examination, conservation of
36 its assets, restoration of impaired capital, and the making of any reasonable or
37 equitable adjustment deemed necessary by the Administrator under any plan of
38 reorganization.

39 (d) If the Administrator after taking custody of a savings bank finds that one or
40 more of the reasons for having taken custody continue to exist through the period of
41 his custody, with little or no likelihood of amelioration of the situation, then he shall
42 appoint as receiver or co-receiver any qualified person, firm, or corporation for the
43 purpose of liquidation of the savings bank, which receiver shall furnish bond in form,
44 amount, and with surety as the Administrator may require. The Administrator may

1 appoint the association's deposit account insurance corporation or its nominee as the
2 receiver, and such insuring corporation shall be permitted to serve without posting
3 bond.

4 (e) In the event the Administrator appoints a receiver for a savings bank, he shall
5 mail a certified copy of the appointment order by certified mail to the address of the
6 savings bank as it shall appear on the records of the Division, and to any previous
7 receiver or other legal custodian of the savings bank, and to any court or other
8 authority to which such previous receiver or other legal custodian is subject. Notice
9 of such appointment may be published in a newspaper of general circulation in the
10 county where the savings bank has its principal office.

11 (f) Whenever a receiver for a savings bank is appointed pursuant to subsection (d)
12 above the savings bank may within 30 days thereafter bring an action in the Superior
13 Court of Wake County, for an order requiring the Administrator to remove such
14 receiver.

15 (g) The duly appointed and qualified receiver shall take possession promptly of the
16 savings bank for which he or it has been so appointed, in accordance with the terms
17 of such appointment, by service of a certified copy of the Administrator's
18 appointment order upon the savings bank at its principal office through the officer or
19 employee who is present and appears to be in charge. Immediately upon taking
20 possession of the savings bank, the receiver shall take possession and title to books,
21 records and assets of every description of the savings bank. The receiver, by
22 operation of law and without any conveyance or other instrument, act or deed, shall
23 succeed to all the rights, titles, powers and privileges of the savings bank, its members
24 or stockholders, holders of deposit accounts, its officers and directors or any of them;
25 and to the titles to the books, records and assets of every description of any previous
26 receiver or other legal custodian of the savings bank. Such members, stockholders,
27 holders of deposit accounts, officers or directors, or any of them, shall not thereafter,
28 except as hereinafter expressly provided have or exercise any such rights, powers or
29 privileges or act in connection with any assets or property of any nature of the
30 savings bank in receivership. The Administrator, with the approval of the
31 Commission, may at any time, direct the receiver to return the savings bank to its
32 previous or a newly constituted management. The Administrator may provide for a
33 meeting or meetings of the members or stockholders for any purpose, including,
34 without any limitation on the generality of the foregoing, the election of directors or
35 an increase in the number of directors, or both, or the election of an entire new
36 board of directors; and may provide for a meeting or meetings of the directors for
37 any purpose including, without any limitation on the generality of the foregoing, the
38 filling of vacancies on the board, the removal of officers and the election of new
39 officers, or for any of such purposes. Any such meeting of members or stockholders,
40 or of directors, shall be supervised or conducted by a representative of the
41 Administrator.

42 (h) A duly appointed and qualified receiver shall have power and authority to:
43 (1) Demand, sue for, collect, receive and take into his possession all
44 the goods and chattels, rights and credits, moneys and effects, lands

1 and tenements, books, papers, chooses in action, bills, notes and
2 property of every description of the savings bank;

3 (2) Foreclose mortgages, deeds of trust, and other liens executed to the
4 savings bank to the extent the savings bank would have had such
5 right;

6 (3) Institute suits for the recovery of any estate, property, damages or
7 demands existing in favor of the savings bank, and he shall, upon
8 his own application, be substituted as party plaintiff in the place of
9 the savings bank in any suit or proceeding pending at the time of
10 his appointment;

11 (4) Sell, convey, and assign all the property rights and interests owned
12 by the savings bank;

13 (5) Appoint agents to serve at his pleasure;

14 (6) Examine and investigate papers and persons, and pass on claims as
15 provided in the regulations as prescribed by the Administrator;

16 (7) Make and carry out agreements with the insuring corporation or
17 with any other financial institution for the payment or assumption
18 of the savings bank's liabilities, in whole or in part, and to sell,
19 convey, transfer, pledge, or assign assets as security or otherwise
20 and to make guarantees in connection therewith; and

21 (8) Perform all other acts which might be done by the employees,
22 officers and directors;

23 Such powers shall be continued in effect until liquidation and dissolution or until
24 return of the savings bank to its prior or newly constituted management.

25 (i) A receiver may at any time during the receivership and prior to final
26 liquidation be removed and a replacement appointed by the Administrator.

27 (j) The Administrator may determine that such liquidation proceedings should be
28 discontinued. He shall then remove the receiver and restore all the rights, powers,
29 and privileges of its members and stockholders, customers, employees, officers and
30 directors, or restore such rights, powers, and privileges to its members, stockholders
31 and customers, and grant such rights, powers and privileges to a newly constituted
32 management, all as of the time of such restoration of the savings bank to its
33 management unless another time for such restoration shall be specified by the
34 Administrator. The return of a savings bank to its management or to a newly
35 constituted management from the possession of a receiver shall, by operation of law
36 and without any conveyance or other instrument, act or deed, vest in the savings
37 bank the title to all property held by the receiver in his capacity as receiver for the
38 savings bank.

39 (k) A receiver may also be appointed under the authority of G.S. 1-502. No judge
40 or court, however, shall appoint a receiver for any State savings bank unless five
41 days' advance notice of the motion, petition or application for appointment of a
42 receiver shall have been given to the savings bank and to the Administrator.

43 (l) Following the appointment of a receiver, the Administrator may request the
44 Attorney General to institute an action in the name of the Administrator in the

1 superior court against the savings bank for the orderly liquidation and dissolution of
2 the association, and for an injunction to restrain the officers, directors and employees
3 from continuing the operation of the savings bank.

4 (m) Claims against a State association in receivership shall have the following
5 order of priority for payment:

- 6 (1) Costs, expenses and debts of the savings bank incurred on or after
7 the date of the appointment of the receiver, including
8 compensation for the receiver;
- 9 (2) Claims of holders of special purpose or thrift accounts;
- 10 (3) Claims of holders of deposit accounts;
- 11 (4) Claims of general creditors;
- 12 (5) Claims of stockholders of a stock savings bank;
- 13 (6) All remaining assets to members and stockholders in an amount
14 proportionate to their holdings as of the date of the appointment of
15 the receiver.

16 (n) All claims of each class described within subsection (m) above shall be paid in
17 full so long as sufficient assets remain. Members of the class for which the receiver
18 cannot make payment in full because assets will be depleted during payment to such
19 class shall be paid an amount proportionate to their total claims.

20 (o) The Administrator shall have the authority to direct the payment of claims for
21 which no provision is herein made, and may direct the payment of claims within a
22 class. The Administrator shall have the authority to promulgate rules and regulations
23 governing the payment of claims by an association in receivership.

24 (p) When all assets of the savings bank have been fully liquidated, and all claims
25 and expenses have been paid or settled, and the receiver shall recommend a final
26 distribution, the dissolution of the savings bank in receivership shall be accomplished
27 in the following manner:

- 28 (1) The receiver shall file with the Administrator a detailed report, in
29 a form to be prescribed by the Administrator, of his acts and
30 proposed final distribution, and dissolution.
- 31 (2) Upon the Administrator's approval of the final report of the
32 receiver, the receiver shall provide such notice and thereafter shall
33 make such final distribution, in such manner as the Administrator
34 may direct.
- 35 (3) When a final distribution has been made except as to any
36 unclaimed funds, the receiver shall deposit such unclaimed funds
37 with the Administrator and shall deliver to the Administrator all
38 books and records of the dissolved association.
- 39 (4) Upon completion of the foregoing procedure, and upon the joint
40 petition of the Administrator and receiver to the superior court,
41 the court may find that the savings bank should be dissolved, and
42 following such publication of notice of dissolution as the court may
43 direct, the court may enter a decree of final resolution and the
44 savings bank shall therefore be dissolved.

1 (5) Upon final dissolution of the savings bank in receivership or at
2 such time as the receiver shall be otherwise relieved of his duties,
3 the Administrator shall cause an audit to be conducted, during
4 which the receiver shall be available to assist in such. The
5 accounts of the receiver shall then be ruled upon by the
6 Administrator and Commission and if approved, the receiver shall
7 thereupon be given a final and complete discharge and release.

8 **"§ 54C-84. Judicial review.**

9 Any person or State savings bank against whom a cease and desist order is issued
10 or a fine is imposed may have such order or fine reviewed by a court of competent
11 jurisdiction. Except as otherwise provided, an appeal may be made only within 30
12 days of the issuance of the order or the imposition of the fine, whichever is later.

13 **"§ 54C-85. Indemnity.**

14 No person who is fined or penalized for a violation of any criminal provision of
15 this Article shall be reimbursed or indemnified in any fashion by the savings bank for
16 such fine or penalty.

17 **"§ 54C-86. Cumulative penalties.**

18 All penalties, fines, and remedies provided by this Article shall be cumulative.

19 **"§ 54C-87. Emergency limitations.**

20 The Administrator, with the approval of the Governor, may impose a limitation
21 upon the amounts withdrawable or payable from deposit accounts of savings banks
22 during any specifically defined period when such limitation is in the public interest
23 and welfare.

24 **"§§ 54C-88 to 54C-99: Reserved for future codification purposes.**

25 **"ARTICLE 6.**

26 **"Corporate Administration.**

27 **"§ 54C-100. Membership of a mutual association.**

28 The membership of a mutual State savings bank shall consist of:

- 29 (1) Those who hold deposit accounts in a savings bank, and
30 (2) Those who borrow funds and those who become obligated on a
31 loan from the savings bank, for such time as the loan remains
32 unpaid and the borrower remains liable to the savings bank for the
33 payment thereof.

34 Any person in his own right, or in a trust or other fiduciary capacity, or any
35 partnership, association, corporation, political subdivision or public or governmental
36 unit or entity may become a member of a mutual savings bank. Members shall be
37 possessed of such voting rights and such other rights as are provided by a savings
38 bank's certificate of incorporation and bylaws as approved by the Administrator.
39 Members are the owners of a mutual savings bank.

40 **"§ 54C-101. Directors.**

41 (a) The directors of a mutual savings bank shall be elected by the members at an
42 annual meeting, held pursuant to the terms of G.S. 54C-106, for such terms as the
43 bylaws of the savings bank may provide. Director's terms may be classified in the
44 certificate of incorporation. Voting for directors by deposit account holders shall be

1 weighted according to the total amount of deposit accounts held by such members,
2 subject to any maximum number of votes per member which a savings bank may
3 choose to prescribe in its bylaws. Voting rights for borrowers shall be as prescribed
4 in the bylaws. Such requirement shall be fully prescribed in a detailed manner in the
5 bylaws of the savings bank.

6 (b) The directors of a stock savings bank shall be elected by the stockholders at an
7 annual meeting, held pursuant to the terms of G.S. 54C-106, for such terms as the
8 bylaws of the savings bank may provide. Director's terms may be classified in the
9 certificate of incorporation.

10 (c) Each director of a State savings bank shall have a significant ownership
11 interest in the State savings bank. The Administrator shall promulgate rules and
12 regulations defining significant ownership interest.

13 (d) Every State savings bank shall have no less than five directors.

14 **"§ 54C-102. Bylaws.**

15 The bylaws and any amendments thereof shall be certified by the appropriate
16 corporate official and submitted to the Administrator for his approval before they
17 may become effective.

18 **"§ 54C-103. Duties and liabilities of officers and directors to their associations.**

19 Officers and directors of a State savings bank shall act in a fiduciary capacity
20 towards the savings bank and its members or stockholders. They shall discharge
21 duties of their respective positions in good faith, and with that diligence and care
22 which ordinarily prudent men would exercise under similar circumstances in like
23 positions.

24 **"§ 54C-104. Conflicts of interest.**

25 Each director, officer and employee of a State savings bank has a fundamental
26 duty to avoid placing himself in a position which creates, or which leads to or could
27 lead to a conflict of interest or appearance of a conflict of interest having adverse
28 effects on the interests of members, customers or stockholders of the savings bank,
29 soundness of the savings bank, and the purposes of this Chapter.

30 **"§ 54C-105. Voting rights.**

31 Voting rights in the affairs of a State savings bank may be exercised by members
32 and stockholders by voting either in person or by proxy. The Administrator shall
33 promulgate rules and regulations governing forms of proxies, holders of proxies and
34 proxy solicitation.

35 **"§ 54C-106. Annual meetings notice required.**

36 (a) Each savings bank shall hold an annual meeting of its members or
37 stockholders. The annual meeting shall be held at a time and place as shall be
38 provided in the bylaws or determined by the board of directors.

39 (b) The board of directors of a mutual savings bank shall cause to be published
40 once a week for two weeks preceding such meeting, in a newspaper of general
41 circulation in the county where such savings bank has its principal office, a notice of
42 the meeting, signed by the savings bank's secretary, and stating the time and place
43 where it is to be held. In addition to the foregoing notice, each savings bank shall
44 disseminate additional notice of any annual meeting by notice made available to all

1 members entering the premises of any office or branch of the savings bank in the
2 regular course of business by posting therein, in full view of the public and such
3 members, one or more conspicuous signs or placards announcing the pending
4 meeting, the time, date and place of the meeting and the availability of additional
5 information. Printed matter shall be freely available to said members containing any
6 information as may be prescribed in rules and regulations issued by the
7 Administrator. Such additional notice shall be given at any time within the period of
8 60 days prior to and 14 days prior to the meeting and shall continue through the time
9 of the meeting.

10 (c) The board of directors of a stock savings bank shall cause a written or printed
11 notice signed by the savings bank's secretary, and stating the time and place of the
12 annual meeting to be delivered not less than 10 days nor more than 50 days before
13 the date of the meeting, either personally or by mail to each stockholder of record
14 entitled to vote at the meeting. If mailed, such notice shall be deemed to be
15 delivered when deposited in the United States postal service addressed to the
16 stockholder at his address as it appears on the records of the corporation, with
17 postage thereon prepaid.

18 "§ 54C-107. Special meetings; notice required.

19 (a) Special meetings of members or stockholders of a savings bank may be called
20 by the president or the board of directors or by such other officers or persons as may
21 be provided for in the charter or bylaws of the savings bank.

22 (b) Notice of any special meeting of members or stockholders shall be given in
23 the same manner as provided for annual meetings under G.S. 54C-106.

24 "§ 54C-108. Quorum.

25 Unless otherwise provided in the savings bank's charter or bylaws, 50 holders of
26 deposit accounts in a mutual savings bank or 50 stockholders or a majority of shares
27 eligible to vote in a stock savings bank, present in person or represented by proxy,
28 shall constitute a quorum at any annual or special meeting.

29 "§ 54C-109. Bonding.

30 (a) A savings bank shall maintain a blanket indemnity bond of at least a minimum
31 amount as prescribed by the Administrator.

32 (b) A savings bank which employs collection agents, who for any reason are not
33 covered by the bond as hereinabove required, shall provide for the bonding of each
34 such agent in an amount equal to at least twice the average monthly collections of
35 such agent. Such agents shall be required to make settlement with the association at
36 least once monthly. No such coverage by bond will be required of any agent which is
37 a bank or an association insured by the Federal Deposit Insurance Corporation. The
38 amount and form of such bonds and the sufficiency of the surety thereon shall be
39 approved by the board of directors and the Administrator before such is valid. All
40 such bonds shall provide that a cancellation thereof either by the surety or by the
41 insured shall not become effective unless and until 30 days' notice in writing shall
42 have been given to the Administrator.

43 "§§ 54C-110 to 54C-120: Reserved for future codification purposes.

44 "ARTICLE 7.

"Loans and Investments.

"§ 54C-121. Loans.

(a) A savings bank may loan funds as follows:

- (1) On the security of deposit accounts, but no such loan shall exceed the withdrawal value of the pledged deposit account.
- (2) On the security of real property:
 - a. Of a value, determined in accordance with the provisions of this Chapter and such appraisal rules and regulations as the Administrator may promulgate, sufficient to provide good and ample security for the loan; and
 - b. With a fee simple title or a leasehold title of no less duration than 10 years beyond the maturity of the loan; and
 - c. With the title established by such evidence of title as is consistent with sound lending practices; and
 - d. With the security interest in such real estate evidenced by an appropriate written instrument and the loan evidenced by a note, bond or similar written instrument. A loan on the security of the whole of the beneficial interest in a land trust satisfies the requirements of this subparagraph if the title to the land is held by a corporate trustee and if the real estate held in the land trust meets the other requirements of this paragraph.
- (3) For the purpose of repair, improvement, rehabilitation, furnishing or equipment of real estate.
- (4) For the purpose of financing or refinancing an existing ownership interest in certificates of stock, certificates of beneficial interest or other evidence of an ownership interest in, and a proprietary lease from, a corporation, trust or partnership formed for the purpose of the cooperative ownership of real estate, secured by the assignment or transfer of such certificates or other evidence of ownership of the borrower.
- (5) For the purchase of loans which, at the time of purchase, the savings bank could make in accordance with this Chapter.
- (6) For the purchase of installment contracts for the sale of real estate, and title thereto which is subject to such contract, but in each instance only if the savings bank at the time of purchase, could make a mortgage loan of the same amount and for the same length of time on the security of such real estate.
- (7) For the purchase of loans guaranteed or insured, wholly or in part, by the United States or any of its instrumentalities.
- (8) For secured or unsecured financing for business, corporate, personal, family, or household purposes, or for secured or unsecured loans for agricultural or commercial purposes, subject to such rules and regulations as the Administrator may promulgate.

1 (9) For the purpose of mobile home financing subject, to the such
2 rules and regulations as the Administrator may promulgate.

3 (10) For loans secured by no more than ninety percent (90%) of the
4 cash surrender value of any life insurance policy.

5 (11) For loans on any collateral which would be a legal investment if
6 made by the savings bank pursuant to the provisions of this
7 Chapter.

8 (b) Any provision of this Chapter to the contrary notwithstanding, any savings
9 bank may make any loan which such savings bank could make if it were incorporated
10 and operating as a federal association or as a State or national bank.

11 "§ 54C-122. Loans.

12 (a) The board of directors shall establish procedures by which loans are to be
13 considered, approved, and made by the savings bank.

14 (b) All actions on loan applications to the savings bank shall be reported to the
15 board of directors at its next meeting.

16 (c) Subject to such regulations as the Administrator deems appropriate, a savings
17 bank may lend funds on any collateral deemed sufficient by the board of directors to
18 properly secure loans. Loans made solely upon security of collateral consisting of
19 stock or equity securities which are not listed on a national stock exchange or
20 regularly quoted and offered for trade on an over-the-counter market shall be
21 considered loans without security.

22 (d) A savings bank may lend funds without requiring security. No unsecured loan
23 shall exceed the maximum amount authorized by rules and regulations of the
24 Administrator.

25 (e) A savings bank may make insured or guaranteed loans in accordance with the
26 provisions of G.S. 53-45.

27 (f) A savings bank may invest any funds on hand in the purchase of loans of a
28 type which the savings bank could make in accordance with the provisions of this
29 Chapter.

30 (g) A savings bank may invest in a participating interest in loans of a type which
31 the savings bank could make in accordance with the provisions of this Chapter.

32 (h) A savings bank may sell any loan, including any participating interest in a
33 loan.

34 "§ 54C-123. Prohibited security.

35 No savings bank may accept its own capital stock or its own mutual capital
36 certificates as security for any loan made by such savings bank.

37 "§ 54C-124. Loans conditioned on certain transactions prohibited.

38 (a) No savings bank or service corporation thereof shall require as a condition of
39 making a loan that the borrower contract with any specific person or organization for
40 particular services.

41 (b) A savings bank or service corporation thereof must notify borrowers prior to
42 the loan commitment of their right to select the attorney or law firm rendering legal
43 services in connection with the loan, and the person or organization rendering
44 insurance services in connection with the loan. Such persons or organizations must

1 be approved by the savings bank's board of directors, pursuant to such rules and
2 regulations as the Administrator may prescribe.

3 (c) A savings bank or service corporation thereof may require borrowers to
4 reimburse such savings bank for legal services rendered to it by its own attorney only
5 when the fee is limited to legal services required by the making of such loan.

6 **"§ 54C-125. Loan expenses and fees.**

7 (a) Subject to the provisions of Chapter 24 of the General Statutes, a savings bank
8 may require borrowers to pay all reasonable expenses incurred by the savings bank in
9 connection with making, closing, disbursing, extending, adjusting or renewing loans.
10 Such charges may be collected by the savings bank from the borrower and paid to
11 any persons, including any director, officer or employee of the savings bank who may
12 render services in connection with the loan, or such charges may be paid directly by
13 the borrower.

14 (b) A savings bank may require a borrower to pay a reasonable charge for late
15 payments made during the course of repayment of a loan. Subject to the provisions
16 G.S. 24-10.1, such payments may be levied only upon such terms and conditions as
17 shall be fixed by the savings bank's board of directors and agreed to by the borrower
18 in the loan contract.

19 (c) Nothing in this Article shall be construed to modify Chapter 24 of the General
20 Statutes, or other applicable law, or to allow fees, charges, or interest beyond that
21 permitted by Chapter 24 or other applicable law.

22 **"§ 54C-126. Methods of loan repayment.**

23 Subject to such rules and regulations as the Administrator may prescribe, a savings
24 bank shall agree in writing with borrowers as to the method or plan by which an
25 indebtedness shall be repaid.

26 **"§ 54C-127. Insider loans.**

27 The Administrator may promulgate rules and regulations no less stringent than the
28 requirements of the appropriate federal regulatory authority, and as he deems
29 necessary, to govern the making of loans to officers and directors, and their
30 associates, and companies or other business entities controlled by them.

31 **"§ 54C-128. Rule-making power of Administrator.**

32 The Administrator shall, from time to time, promulgate such rules and regulations
33 in respect to loans permitted to be made by State savings banks as may be reasonably
34 necessary to assure that such loans are in keeping with sound lending practices and to
35 promote the purposes of this Chapter; provided, that such rules and regulations shall
36 not prohibit a savings bank from making any loan which is a permitted loan for
37 federal savings banks under federal regulatory authority.

38 **"§ 54C-129. Nonconforming loans and investments.**

39 Unless otherwise provided, every loan or other investment made in violation of
40 this Chapter shall be due and payable according to its terms and the obligation
41 thereof shall not be impaired; provided, that such violation consists only of the
42 lending of an excessive sum on authorized security or of investing in an unauthorized
43 investment.

44 **"§ 54C-130. Limitation on loans to one borrower.**

1 (a) The total loans and extensions of credit, both direct and indirect, by a savings
2 bank to any person, other than a municipal corporation for money borrowed,
3 outstanding at one time and not fully secured, as determined in a manner consistent
4 with subsection (b) of this section, by collateral having a market value at least equal
5 to the amount of the loan or extension of credit shall not exceed fifteen percent
6 (15%) of the net worth of the savings bank. The total liabilities of a firm shall
7 include the liabilities of the members of the firm.

8 (b) The total loans and extensions of credit, both direct and indirect, by a savings
9 bank to any person outstanding at one time and fully secured by readily marketable
10 collateral having a market value, as determined by reliable and continuously available
11 price quotations, at least equal to the amount of the funds outstanding shall not
12 exceed ten percent (10%) of the net worth of the savings bank. This limitation shall
13 be separate from and in addition to the limitation contained in subsection (a) above.

14 (c) For purposes of this section, the term 'person' shall be deemed to include an
15 individual or a corporation, partnership, trust, association, joint venture, pool,
16 syndicate, sole proprietorship, unincorporated organization or any other form of
17 entity not specifically listed herein. Loans or extensions of credit to one person
18 include loans made to other persons when the proceeds of the loans or extensions of
19 credit are to be used for the direct benefit of the first person or the persons are
20 engaged in a common enterprise.

21 (d) The limitations of this section shall not apply to loans or obligations to the
22 extent that they are secured or covered by guarantees or by commitments or
23 agreements to take over or purchase the same, made by any federal reserve bank or
24 by the United States or any department, board, bureau, commission or establishment
25 of the United States, including any corporation wholly owned directly or indirectly by
26 the United States.

27 (e) The limitations of this section shall not apply to loans or obligations made for
28 the following:

29 (1) For any purpose otherwise permitted by this Chapter, not to
30 exceed five hundred thousand dollars (\$500,000); or

31 (2) To develop domestic residential housing units, not to exceed the
32 lesser of thirty million dollars (\$30,000,000) or thirty percent (30%)
33 of the savings bank's net worth if the purchase price of each single
34 family dwelling unit which is financed under this provision does
35 not exceed five hundred thousand dollars (\$500,000) and the loans
36 or obligations made under this provision do not in the aggregate,
37 exceed one hundred fifty percent (150%) of the savings bank's net
38 worth; or

39 (3) Loans to one borrower to finance the sale of real property
40 acquired in satisfaction of debts previously contracted in good
41 faith, not to exceed fifty percent (50%) of the savings bank's net
42 worth.

43 "§ 54C-131. Investment in banking premises.

1 A savings bank may invest in real property and equipment and in leasehold
2 improvements to rented facilities necessary for the conduct of its business and in real
3 property to be held for its future use. A savings bank may invest in an office building
4 or buildings and appurtenances for the purpose of the transaction of the savings
5 bank's business. No such investment may be made without the prior written
6 approval of the Administrator if the total amount of such investments exceeds fifty
7 percent (50%) of the savings bank's net worth. Facilities, furniture and fixtures
8 leased for the purpose set forth in this section shall not be included in this limitation.

9 **"§ 54C-132. United States obligations.**

10 A savings bank may invest in any obligation issued and fully guaranteed in
11 principal and interest by the United States government or any instrumentality thereof.

12 **"§ 54C-133. North Carolina obligations.**

13 A savings bank may invest in any obligation issued and fully guaranteed in
14 principal and interest by the State of North Carolina or any instrumentality thereof.

15 **"§ 54C-134. Federal Home Loan Bank obligations.**

16 A savings bank may invest in the stock of the Federal Home Loan Bank of which
17 such association is a member, and in bonds or other evidences of indebtedness or
18 obligation of any Federal Home Loan Bank.

19 **"§ 54C-135. Deposits in depository institutions.**

20 A savings bank may invest in certificates of deposit, time-insured deposits, savings
21 accounts, demand deposits, or withdrawable accounts of such banks, associations or
22 savings banks as are approved by the board of directors of the savings bank.

23 **"§ 54C-136. Federal government sponsored enterprise obligations.**

24 A savings bank may invest in stock or other evidences of indebtedness or
25 obligations of the Federal National Mortgage Association, the Federal Home Loan
26 Mortgage Corporation, or any other Federal government sponsored enterprise, or any
27 successor thereto.

28 **"§ 54C-137. Municipal and county obligations.**

29 A savings bank may invest in bonds or other evidences of indebtedness which are
30 direct general obligations of any county, city, town, village, school district, sanitation
31 or park district, or other political subdivision or municipal corporation of this State;
32 or in bonds or other evidences of indebtedness which are payable from revenues or
33 earnings specifically pledged therefor, which are issued by the county or an adjoining
34 county or a political subdivision or municipal corporation of a county in this State.

35 **"§ 54C-138. Stock in education agency.**

36 A savings bank may invest in stock or obligations of any corporation doing
37 business in this State, or of any agency of this State or of the United States, where the
38 principal business of such corporation or agency is to make loans for the financing of
39 a college or university education, or education at an industrial education center,
40 technical institute or community college in this State.

41 **"§ 54C-139. Industrial development corporation stock.**

42 A savings bank may invest in stock or other evidence of indebtedness or
43 obligations of business or industrial development corporations chartered by this State
44 or by the United States.

1 "§ 54C-140. Urban renewal investment corporation stock.

2 A savings bank may invest in stock or other evidence of indebtedness or
3 obligations of an urban renewal investment corporation chartered under the laws of
4 this State or of the United States.

5 "§ 54C-141. Limitations on investment in stocks and securities.

6 (a) No savings bank shall make an investment in the capital stock of any other
7 State or federal depository institution that represents more than five percent (5%) of
8 the capital stock of that depository institution.

9 (b) No savings bank shall invest in the aggregate more than fifty percent (50%) of
10 its net worth in the stocks of other corporations, firms, partnerships, or companies,
11 unless such stock is purchased to protect the savings bank from loss. Of this amount,
12 no more than two and one-half percent (2.5%) of the savings bank's net worth may
13 be invested in the stocks or securities of any one issuer. This limitation shall not
14 apply to stock or ownership interests in corporations, firms, partnerships or
15 companies which are subsidiaries of such savings bank. The term 'invest' shall be
16 deemed to include operating a business entity acquired by the savings bank, provided,
17 however, that no savings bank shall make any such investment resulting in operations
18 which are not closely related to the savings bank business without the prior written
19 approval of the Administrator. Any stocks owned or hereafter acquired in excess of
20 the limitations herein imposed shall be disposed of at public or private sale within six
21 months after the date of acquiring the same and if not so disposed of they shall be
22 charged to profit and loss account, and no longer carried on the books as an asset.
23 The limit of time in which said stocks shall be disposed of or charged off the books of
24 the savings bank may be extended by the Administrator if in his judgement it is in
25 the best interest of the savings bank that such extension be granted.

26 (c) This limitation shall not apply with respect to obligations of the government of
27 the United States, or agencies thereof, or to other obligations guaranteed by the
28 United States Government, State of North Carolina, or other state of the United
29 States, or of a city, town, township, county, school district, or other political
30 subdivision of the State of North Carolina.

31 (d) The Administrator may adopt such rules and regulations as are necessary to
32 carry out the provisions of the section, including, but not limited to, requirements as
33 to investment diversification and resource management.

34 "§ 54C-142. Suspension of investment and loan limitation.

35 The board of directors of any savings bank may by resolution duly passed at a
36 meeting of the board request the Administrator to suspend temporarily the limitations
37 on loans and investments as the same may apply to any particular loan or investment
38 in the excess of the limitations of G.S. 54C-124, and G.S. 54C-134 which the savings
39 bank desires to make. Upon receipt of a duly certified copy of such resolution, the
40 Administrator may, in his discretion, suspend the limitations on loans and
41 investments insofar as they would apply to the loan or investment which the savings
42 bank desires to make: Provided however, such loan shall be amply secured and shall
43 be for a period not longer than 36 months.

44 "§ 54C-143. Commercial lending.

1 Subject to such regulations as the Administrator deems appropriate, a savings bank
2 may lend and invest no more than fifteen percent (15%) of its total assets in
3 commercial loans. A commercial loan shall be for business, commercial, corporate
4 and agricultural purposes.

5 **"§ 54C-144. Service corporations.**

6 (a) Any savings bank or group of savings banks or associations may establish
7 service corporations under the provisions of Chapter 55 for corporate organization,
8 provided that the Administrator receives copies of the proposed articles of
9 incorporation and bylaws for approval, prior to filing them with the Secretary of
10 State. Any such savings bank may also invest in the capital stock, obligations or
11 other securities of existing service corporations.

12 (b) No savings bank may make any investment in service corporations if its
13 aggregate investment would exceed ten percent (10%) of its total assets.

14 (c) Service corporations shall be subject to audit and examination by the
15 Administrator, and the cost of examination shall be paid by the service corporation.

16 (d) The permitted activities of a service corporation shall be described in the rules
17 and regulations as promulgated by the Administrator.

18 (e) The location of the principal and branch offices of a service corporation must
19 be approved by the Administrator.

20 **"§ 54C-145. Parity in loans or investments.**

21 Subject to such limitations and restrictions as the Administrator may prescribe
22 through rules and regulations, any savings bank is authorized and permitted to make
23 any loan or investment, or engage in any activity, which may be permitted under
24 State law for banks or under the laws of the United States for federal associations or
25 national banks whose principal offices are located within this State.

26 **"§ 54C-146. Certain powers granted to State savings banks.**

27 (a) In addition to the powers granted under this Chapter, any savings bank
28 incorporated or operated under the provisions of this Chapter is herein authorized to:

- 29 (1) Establish off the premises of any principal office or branch a
30 customer communications terminal, point-of-sale terminal,
31 automated teller machine, automated or other direct or remote
32 information-processing device or machine, whether manned or
33 unmanned, through or by means of which funds or information
34 relating to any financial service or transaction rendered to the
35 public is stored and transmitted, instantaneously or otherwise to or
36 from a savings bank terminal or terminals controlled or used by or
37 with other parties; and the establishment and use of such a device
38 or machine shall not be deemed to constitute a branch office and
39 the capital requirements and standards for approval of a branch
40 office as set forth in the statutes and regulations, shall not be
41 applicable to the establishment of any such off-premises terminal,
42 device or machine; and savings banks may through mutual consent
43 share on-premises unmanned automated teller machines and cash
44 dispensers. The Administrator may prescribe rules and regulations

1 with regard to the application for permission for use, maintenance
2 and supervision of said terminals, devices and machines;

3 (2) Subject to such rules and regulations as the Administrator may
4 prescribe, a savings bank is authorized to issue credit cards, extend
5 credit in connection therewith, and otherwise engage in or
6 participate in credit card operations;

7 (3) Subject to such rules and regulations as the Administrator may
8 prescribe, a savings bank may act as a trustee, executor,
9 administrator, guardian or in any other fiduciary capacity;

10 (4) Become a member of a clearing house association and to pledge
11 assets required for its qualification;

12 (5) a. In accordance with rules and regulations issued by the
13 Administrator, mutual capital certificates may be issued by
14 State-chartered savings banks and sold directly to
15 subscribers or through underwriters, and such certificates
16 shall constitute part of the general reserve and net worth of
17 the issuing savings bank. The Administrator, in the rules
18 and regulations relating to the issuance and sale of mutual
19 capital certificates, shall provide that such certificates:

20 1. Shall be subordinate to all savings accounts, savings
21 certificates, and debt obligations;

22 2. Shall constitute a claim in liquidation on the general
23 reserves, surplus and undivided profits of the savings
24 bank remaining after the payment of all savings
25 accounts, savings certificates, and debt obligations;

26 3. Shall be entitled to the payment of dividends; and

27 4. May have a fixed or variable dividend rate.

28 b. The Administrator shall provide in the rules and regulations
29 for charging losses to the mutual capital, reserves, and other
30 net worth accounts.

31 (b) To such extent as the Administrator may authorize by rules and regulations, a
32 savings bank may issue notes, bonds, debentures, or other obligations or securities.

33 "§ 54C-147. Additional loans and investments.

34 (a) In addition to the authorized loans and investments provided for in this
35 Chapter, but subject to all other provisions of this Chapter, the board of directors of a
36 savings bank may authorize an additional five percent (5%) of the savings bank's
37 assets for such loans and investments. The board of directors of a savings bank shall
38 not authorize the investment or the making of a loan of a type not otherwise
39 authorized in this Chapter.

40 (b) Notwithstanding subsection (a) of this section, such additional amounts of
41 authorized loans and investments shall not be applicable to investments in stocks and
42 securities as defined in G.S. 54C-141, commercial lending as defined in G.S. 54C-143,
43 and service corporation investments as defined in G.S. 54C-144.

1 (c) If a loan or other investment is authorized under more than one section of this
2 Chapter, a savings bank may designate under which section the loan or investment
3 has been made. Such a loan or investment may be apportioned among appropriate
4 categories, and may be moved, in whole or in part, from one category to another.
5 "§§ 54C-148 to 54C-160: Reserved for future codification purposes.

6 "ARTICLE 8.

7 "Operations.

8 "§ 54C-161. Generally accepted accounting principles.

9 Savings banks shall maintain their books and records in accordance with generally
10 accepted accounting principles.

11 "§ 54C-162. Liquidity.

12 Savings banks shall maintain cash and readily marketable investments in an
13 amount that may be established in the rules and regulations of the Administrator but
14 such a requirement shall not be less than ten percent (10%) of the assets of the
15 savings bank. Upon receipt of a duly certified copy of a resolution by the board of
16 directors of any savings bank requesting a temporary suspension, the Administrator
17 may suspend the liquidity requirement for a period not longer than six months.

18 "§ 54C-163. Net worth requirement.

19 Savings banks shall maintain net worth in an amount that may be established in
20 the rules and regulations of the Administrator but such requirement shall not be less
21 than five percent (5%) of the assets of the savings bank. Upon receipt of a duly
22 certified copy of a resolution by the board of directors of any savings bank requesting
23 a temporary suspension, the Administrator may suspend the net worth requirement
24 for a period not longer than six months.

25 "§ 54C-164. Deposit accounts.

26 (a) Every savings bank shall be authorized to raise capital through the solicitation
27 of deposits from any person, natural or corporate, except as restricted or limited by
28 law, or by such regulations as the Administrator may prescribe.

29 (b) Savings banks may receive deposits of funds upon such terms as the contract
30 of deposit shall provide subject to withdrawals or to be paid upon checks of the
31 depositor.

32 "§ 54C-165. Joint accounts.

33 (a) Any two or more persons may open or hold a withdrawable account or
34 accounts. The withdrawable account and any balance thereof shall be held by them
35 as joint tenants, with or without right of survivorship, as the contract shall provide;
36 the account may also be held pursuant to G.S. 41-2.1 and have incidents set forth in
37 that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the
38 contract shall set forth that fact as well. Unless the persons establishing the account
39 have agreed with the savings bank that withdrawals require more than one signature,
40 payment by the savings bank to, or on the order of, any persons holding an account
41 authorized by this section shall be a total discharge of the savings bank's obligation as
42 to the amount so paid. Funds in a joint account established with the right of
43 survivorship shall belong to the surviving joint tenant or tenants upon the death of a
44 joint tenant, and the funds shall be subject only to the personal representative's right

1 of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the
2 account is established pursuant to the provisions of that section. Payment by the
3 savings bank of funds in the joint account to a surviving joint tenant or tenants shall
4 terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to
5 collect against the savings bank for the funds so paid, but the personal
6 representative's authority to collect such funds from the surviving joint tenant or
7 tenants is not terminated. A pledge of such account by any holder or holders shall,
8 unless otherwise specifically agreed upon, be a valid pledge and transfer of such
9 account, or of the amount so pledged, and shall not operate to sever or terminate the
10 joint ownership of all or any part of the account. Persons establishing an account
11 under this section shall sign a statement showing their election of the right of
12 survivorship in the account, and containing language set forth in a conspicuous
13 manner and substantially similar to the following:

14 'SAVINGS BANK (or name of institution) JOINT ACCOUNT
15 WITH RIGHT OF SURVIVORSHIP
16 G.S. 54C-165

17 We understand that by establishing a joint account under the provisions of G.S.
18 54C-165 that:

- 19 1. The savings bank (or name of institution) may pay the money in
20 the account to, or on the order of, any person named in the
21 account unless we have agreed with the savings bank that
22 withdrawals require more than one signature; and
- 23 2. Upon the death of one joint owner the money remaining in the
24 account will belong to the surviving joint owners and will not pass
25 by inheritance to the heirs of the deceased joint owner or be
26 controlled by the deceased joint owner's will.

27 We DO elect to create the right of survivorship in this account.

28 _____,
29 _____,
30 (a) This section shall not be deemed exclusive. Deposit accounts not conforming
31 to this section shall be governed by other applicable provisions of the General
32 Statutes or the common law as appropriate.

33 (b) Nothing herein contained shall be construed to repeal or modify any of the
34 provisions of G.S. 105-24, relating to the administration of the estate tax laws of this
35 State, or provisions of law relating to estate taxes; the provisions herein shall regulate,
36 govern, and protect the savings bank in its relationships with such joint owners of
37 deposit accounts as herein provided.

38 (c) No addition to such account, nor any withdrawal or payment shall affect the
39 nature of the account as a joint account or affect the right of any tenant to terminate
40 the account.

41 "§ 54C-166. Trust accounts.

42 (a) If any person establishing a withdrawable account shall execute a written
43 agreement with the savings bank containing a statement that it is executed pursuant
44 to the provisions of this subsection and providing for the account to be held in the

1 name of such person as trustee for not more than one person designated as
2 beneficiary, the account and any balance thereof shall be held as a trust account with
3 the following incidents:

- 4 (1) The trustee during the trustee's lifetime may change the designated
5 beneficiary by a written direction to the savings bank.
- 6 (2) The trustee may withdraw funds by writing checks or otherwise, as
7 set forth in the account contract, and receive payment in cash or
8 check payable to the trustee's personal order. Such payment or
9 withdrawal shall constitute a revocation of the trust agreement as
10 to the amount withdrawn.
- 11 (3) If the beneficiary is living and of legal age at the death of the
12 trustee, the beneficiary shall be the holder of the account, and
13 payment by the savings bank to the holder shall be a total
14 discharge of the savings bank's obligation as to the amount paid.
- 15 (4) If the beneficiary predeceases the trustee, the account shall become
16 an individual account of the trustee and shall have the legal
17 incidents of an individual account.
- 18 (5) If the named beneficiary is not of legal age at the death of the
19 trustee, the savings bank shall transfer the funds in the account to
20 the general guardian or guardian of the estate, if any, of the minor
21 beneficiary. If no guardian of the minor beneficiary has been
22 appointed, the savings bank shall hold the funds in a similar
23 interest-bearing account in the name of the minor until the minor
24 reaches the age of majority or until a duly appointed guardian
25 withdraws the funds.
- 26 (6) Funds in a trust account established pursuant to this subsection
27 shall belong to the beneficiary upon the death of the trustee and
28 the funds shall be subject only to the personal representative's right
29 of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the
30 savings bank of funds in the trust account to the beneficiary shall
31 terminate the personal representative's authority under G.S. 28A-
32 15-10(a)(1) to collect against the savings bank for the funds so
33 paid, but the personal representative's authority to collect such
34 funds from the beneficiary is not terminated.

35 The person establishing an account under this subsection shall sign a statement
36 containing language set forth in a conspicuous manner and substantially similar to the
37 following:

38 'SAVINGS BANK (or name of institution) TRUST ACCOUNT
39 G.S. 54C-166(a)

40 I understand that by establishing a trust account under the provisions of G.S. 54C-
41 166(a) that:

- 42 1. During my lifetime I may withdraw the money in the account; and
- 43 2. By written direction to the savings bank (or name of institution) I
44 may change the beneficiary; and

1 3. Upon my death the money remaining in the account will belong to
2 the beneficiary, and the money will not be inherited by my heirs or
3 be controlled by my will.

4
5 (a1) This section shall not be deemed exclusive. Deposit accounts not conforming
6 to this section shall be governed by other applicable provision of the General Statutes
7 or the common law, as appropriate.

8 (b) Whenever the beneficiary of a trust account does not survive the trustee then
9 the account and any balance thereof which exists shall be held by the trustee in the
10 trustee's own right and for the trustee's own use and benefit.

11 (c) No addition to such accounts, nor any withdrawal, payment, or change of
12 beneficiary shall affect the nature of such accounts as trust accounts, or affect the
13 right of a trustee to terminate the account.

14 (d) Nothing herein contained shall be construed to repeal or modify any of the
15 provisions of G.S. 105-24, relating to the administration of the estate tax laws of this
16 State, or provisions of laws relating to estate taxes.

17 "§ 54C-167. Personal agency accounts.

18 (a) A person may open a personal agency account by written contract containing
19 a statement that it is executed pursuant to the provisions of this section. A personal
20 agency account may be a checking account, savings account, time deposit, or any
21 other type of withdrawable account or certificate. The written contract shall name an
22 agent who shall have authority to act on behalf of the depositor in regard to the
23 account as set out in this subsection. The agent shall have the authority to:

- 24 (1) Make, sign, or execute checks drawn on the account or otherwise
25 make withdrawals from the account;
26 (2) Endorse checks made payable to the principal for deposit only into
27 the account; and
28 (3) Deposit cash or negotiable instruments, including instruments
29 endorsed by the principal, into the account.

30 A person establishing an account under this section shall sign a statement
31 containing language substantially similar to the following in a conspicuous manner:

32 'SAVINGS BANK (Or name of institution) PERSONAL AGENCY ACCOUNT
33 G.S. 54C-167

34 I understand that by establishing a personal agency account under the provisions of
35 G.S. 54C-167 that the agent named in the account may:

- 36 1. Sign checks drawn on the account; and
37 2. Make deposits into the account.

38 I also understand that upon my death the money remaining in the account will be
39 controlled by my will or inherited by my heirs.

40
41 (b) An account created under the provisions of this section grants no ownership
42 right or interest in the agent. Upon the death of the principal there is no right of
43 survivorship to the account and the authority set out in subsection (a) terminates.

1 (c) The written contract referred to in subsection (a) shall provide that the
2 principal may elect to extend the authority of the agent set out in subsection (a) to
3 act on behalf of the principal in regard to the account notwithstanding the subsequent
4 incapacity or mental incompetence of the principal. If the principal so elects to
5 extend such authority of the agent, then upon the subsequent incapacity or mental
6 incompetence of the principal, the agent may continue to exercise such authority,
7 without the requirement of bond or of accounting to any court, until such time as the
8 agent shall receive actual knowledge that such authority has been terminated by a
9 duly qualified guardian of the estate of the incapacitated or incompetent principal or
10 by the duly appointed attorney-in-fact for the incapacitated or incompetent principal,
11 acting pursuant to a durable power of attorney (as defined in G.S. 32A-8) which
12 grants to the attorney-in-fact that authority in regard to the account which is granted
13 to the agent by the written contract executed pursuant to the provisions of this
14 section, at which time the agent shall account to such guardian or attorney-in-fact for
15 all actions of the agent in regard to the account during the incapacity or
16 incompetence of the principal. If the principal does not so elect to extend the
17 authority of the agent, then upon the subsequent incapacity or mental incompetence
18 of the principal, the authority of the agent set out in subsection (a) terminates.

19 (d) When an account under this section has been established all or part of the
20 account or any interest or dividend thereon may be paid by the savings bank on a
21 check made, signed, or executed by the agent. In the absence of actual knowledge
22 that the principal has died or that the agency created by the account has been
23 terminated, such payment shall be a valid and sufficient discharge to the savings bank
24 for payment so made.

25 **"§ 54C-168. Collection of processing fee for returned checks.**

26 Notwithstanding any other provision of law, a processing fee may be charged and
27 collected by any savings bank for checks on which payment has been refused by the
28 payer depository institution. A savings bank may also collect said fee for checks
29 drawn on that savings bank with respect to an account with insufficient funds.

30 **"§ 54C-169. Right of setoff on deposit accounts.**

31 (a) A savings bank shall have a right of setoff, without further agreement or
32 pledge, upon all deposit accounts owned by any member or customer to whom or
33 upon whose behalf the savings bank has made an unsecured advance of money by
34 loan; and upon default in the repayment or satisfaction thereof, the savings bank may
35 cancel on its books all or any part of the deposit accounts owned by such member or
36 customer, and apply the value of such accounts in payment of such obligation.

37 (b) A savings bank which exercises the right of setoff provided in this section shall
38 first give 30 days notice to the member or customer that such right will be exercised.
39 Such accounts may be held or frozen, with no withdrawals permitted, during the 30-
40 day notice period. Such accounts may not be canceled and the value thereof may not
41 be applied to pay such obligation until the 30-day period has expired without the
42 member or customer having cured the default on the obligation. The amount of any
43 member's or customer's interest in a joint account or other account held in the

1 names of more than one person shall be subject to the right of setoff provided in this
2 section.

3 (c) If a savings bank shall proceed in good faith as provided in this section, but it
4 is later determined that the savings bank was not entitled to have held or set off
5 funds, then the savings bank's sole obligation shall be to return the funds to the
6 member's or customer's account together with interest at the rate that would have
7 applied if the account had not been held or set off; the savings bank shall not
8 otherwise be liable for any costs or damages. This section is not exclusive, but shall
9 be in addition to contract, common law and other rights of setoff. Such other rights
10 shall not be governed in any fashion by this section.

11 **"§ 54C-170. Minors as deposit account holders.**

12 A savings bank may issue a deposit account to a minor as the sole and absolute
13 owner and receive payments, pay withdrawals, accept pledges and act, or as a joint
14 owner, in any other manner with respect to such account on the order of the minor
15 with like effect as if he were of full age and legal capacity. Any payment to a minor
16 shall be a discharge of the savings bank to the extent thereof. The account shall be
17 held for the exclusive right and benefit of the minor, and any joint owners, free from
18 the control of all persons, except creditors.

19 **"§ 54C-171. Deposit accounts as deposit of securities.**

20 Notwithstanding any restrictions or limitations contained in any law of this State,
21 the deposit accounts of any State savings bank or of any federal savings bank having
22 its principal office in this State, may be accepted by any agency, department or
23 official of this State in any case wherein such agency, department or official acting in
24 its or his official capacity requires that securities be deposited with such agency,
25 department or official.

26 **"§ 54C-172. New account books.**

27 A new account book or certificate or other evidence of ownership of a deposit
28 account may be issued in the name of the holder of record at any time when
29 requested by such holder or his legal representative upon proof satisfactory to the
30 savings bank that the original account book or certificate has been lost or destroyed.
31 Such new account book or certificate shall expressly state that it is issued in lieu of
32 the one lost or destroyed and that the savings bank shall in no way be liable
33 thereafter on account of the original book or certificate. The savings bank may in its
34 bylaws require indemnification against any loss that might result from the issuance of
35 the new account book or certified certificate.

36 **"§ 54C-173. Transfer of deposit accounts.**

37 The owner of a deposit account may transfer his rights therein absolutely or
38 conditionally to any other person eligible to hold the same but such transfer may be
39 made on the books of the savings bank only upon presentation of evidence of transfer
40 satisfactory to the savings bank, and accompanied by the proper application for
41 transfer by the transferor and transferee, who shall accept such account subject to the
42 terms and conditions of the account contract, the bylaws of the savings bank, the
43 provisions of its certificate of incorporation, and all rules and regulations of the
44 Administrator. Notwithstanding the effectiveness of such a transfer between the

1 parties thereto, the savings bank may treat the holder of record of a deposit account
2 as the owner thereof for all purposes, including payment and voting (in the case of a
3 mutual savings bank) until such transfer and assignment has been recorded by the
4 savings bank.

5 **"§ 54C-174. Authority of power of attorney.**

6 A savings bank may continue to recognize the authority of an individual holding a
7 power of attorney in writing to manage or to make withdrawals either in whole or in
8 part from the deposit account of a customer or member until it receives written or
9 actual notice of death or of adjudication of incompetency of such member or
10 revocation of the authority of such individual holding such power of attorney.
11 Payment by the savings bank to an individual holding a power of attorney prior to
12 receipt of such notice shall be a total discharge of the savings bank's obligation as to
13 the amount so paid.

14 **"§ 54C-175. Holidays.**

15 (a) Each State and federal savings bank, including every branch or office thereof,
16 domiciled in North Carolina shall observe the following as legal holidays and shall
17 not open for the transaction of business with the public on those days:

- 18 (1) New Year's Day, January 1;
- 19 (2) Monday, January 2, when January 1 (New Year's Day) falls on
20 Sunday;
- 21 (3) Monday, January 3, when January 1 (New Year's Day) falls on a
22 Saturday;
- 23 (4) President's Day, the third Monday in February;
- 24 (5) Good Friday;
- 25 (6) Memorial Day, the last Monday in May;
- 26 (7) Independence Day, July 4;
- 27 (8) Monday, July 5, when July 4 (Independence Day) falls on a
28 Sunday;
- 29 (9) Friday, July 3, when July 4 (Independence Day) falls on a
30 Saturday;
- 31 (10) Labor Day, the first Monday in September;
- 32 (11) Thanksgiving Day, the fourth Thursday in November;
- 33 (12) Christmas Day, December 25;
- 34 (13) Monday, December 26, when December 25 (Christmas Day) falls
35 on a Sunday.
- 36 (14) Monday, December 27, when December 25 (Christmas Day) falls
37 on a Saturday.

38 (b) Any savings bank may, in addition to the holidays listed above, observe as a
39 holiday any other day designated as a holiday by the savings bank's board of
40 directors.

41 **"§ 54C-176. Power to borrow money.**

42 A savings bank, in its certificate of incorporation or in its bylaws, may authorize
43 the board of directors to borrow money and the board of directors may by resolution
44 adopted by a vote of at least two-thirds of the entire board duly recorded in the

1 minutes authorize the officers of the savings bank to borrow money for the savings
2 bank on such terms and conditions as it may deem proper.

3 "§ 54C-177. Authority to join federal reserve bank.

4 Any State savings bank shall have the power to subscribe to the capital stock and
5 become a member of a federal reserve bank. Any such savings bank shall continue to
6 be subject to the supervision and examination required by the laws of this State,
7 except that the Federal Reserve Board shall have the right, if it deems necessary, to
8 make examinations; and the Administrator may disclose to the Federal Reserve
9 Board, or to the examiners duly appointed by it, all information in reference to the
10 affairs of any savings bank which has become, or desires to become, a member of a
11 federal reserve bank.

12 "§ 54C-178. Regional reciprocal acquisitions.

13 State savings banks and holding companies thereof shall have the same powers to
14 acquire and be acquired as State associations and their savings and loan holding
15 companies under Article 3A of Chapter 54B of the General Statutes. For this
16 purpose, the term 'association' as used in Article 3A of Chapter 54B of the General
17 Statutes shall include a State savings bank and the term 'savings and loan holding
18 company' shall include holding companies of State savings banks.

19 "§§ 54C-179 to 54C-194. Reserved for further codification purposes.

20 "ARTICLE 9.

21 "Holding Companies.

22 "§ 54C-195. Holding Companies.

23 (a) Notwithstanding any other provision of law, any stock savings bank may
24 simultaneously with its incorporation or conversion to a stock savings bank provide
25 for its ownership by a holding company. In the case of a conversion, members of the
26 converting savings bank shall have the right to purchase capital stock of the holding
27 company in lieu of capital stock of the converted savings bank in accordance with
28 G.S. 54C-33(c)(6).

29 (b) Notwithstanding any other provision of law, any stock savings bank may
30 reorganize its ownership, to provide for ownership by a holding company, upon
31 adoption of a plan of reorganization by a favorable vote of not less than two-thirds of
32 the members of the board of directors of the savings bank and approval of such plan
33 of reorganization by the holders of not less than a majority of the issued and
34 outstanding shares of stock of the savings bank. The plan of reorganization shall
35 provide that (i) the resulting ownership shall be vested in a North Carolina
36 corporation, (ii) all stockholders of the stock savings bank shall have the right to
37 exchange shares, (iii) the exchange of stock shall not be subject to State or federal
38 income taxation, (iv) stockholders not wishing to exchange shares shall be entitled to
39 dissenters' rights as provided under G.S. 55-113 and (v) the plan of reorganization is
40 fair and equitable to all stockholders.

41 (c) Notwithstanding any other provision of law, any mutual savings bank may
42 reorganize its ownership to provide for ownership by a holding company upon
43 adoption of a plan of reorganization by favorable vote of not less than two-thirds of
44 the members of the board of directors of the savings bank and approval of the plan of

1 reorganization by a majority of the voting members of the savings bank. The plan of
2 reorganization shall provide that (i) the resulting ownership shall be vested in a
3 North Carolina corporation, (ii) the resulting ownership of one or more subsidiary
4 savings banks shall be evidenced by stock shares, (iii) the substantial portion of the
5 assets and all of the insured deposits and part or all of the other liabilities shall be
6 transferred to one or more subsidiary savings banks, (iv) the reorganization shall not
7 be subject to State or federal income taxation, and (v) the plan of reorganization is
8 fair and equitable to all members of the savings bank. The Administrator shall
9 promulgate rules regarding the formation of the subsidiary savings banks and the
10 holding company, including the rights of members, levels of investment in the holding
11 company subsidiaries, and stock sales.

12 (d) A holding company may invest in any investment authorized by its board of
13 directors, except as limited by regulations promulgated by the Administrator pursuant
14 to this Article.

15 (e) Any entity which controls a stock savings bank, or acquires control of a stock
16 savings bank, is a holding company.

17 "§ 54C-196. Supervision of holding companies.

18 Holding companies shall be under the supervision of the Administrator. The
19 Administrator shall exercise all powers and responsibilities with respect to holding
20 companies which he exercises with respect to savings banks.

21 "§§ 54C-197 to 54C-210: Reserved for future codification purposes."

22 Sec. 2. G.S. 54B-26 is repealed.

23 Sec. 3. For the purposes of Chapter 24 of the General Statutes the term
24 "savings and loan association" shall include savings banks.

25 Sec. 4. For the purposes of Chapter 105 of the General Statutes, the term
26 "savings and loan association" shall include savings banks.

27 Sec. 5. This act becomes effective July 1, 1991.

PROPOSED SAVINGS BANK ACT

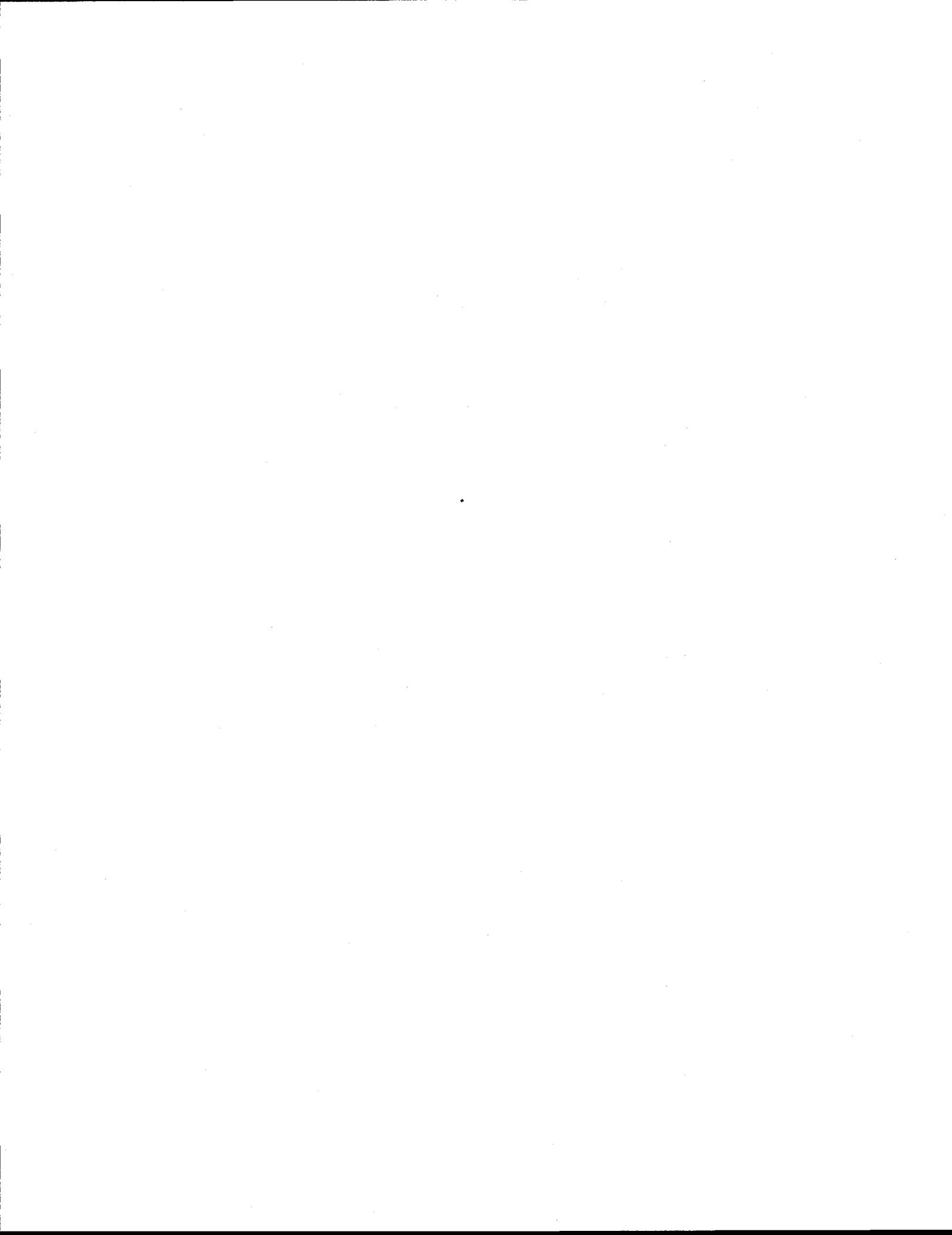
The principal reason for this act is to create a locally owned and managed housing lender whose principal federal regulator is the Federal Deposit Insurance Corporation ("FDIC"). Please refer to the attached letter from Chairman William Seidman of the FDIC.

The major provisions of the Proposed Savings Bank Act are as follows:

1. Investments of the Savings Bank are limited to those activities permitted to a State or national bank or a federal savings and loan association. (54C-145)
2. Savings Banks must have and maintain a minimum net worth to total assets of five percent. (54C-130)
3. Savings Banks must maintain their books and records in accordance with Generally Accepted Accounting Principles ("GAAP"). (54C-161)
4. Savings Banks must maintain a minimum liquidity ratio to total assets of ten percent. (54C-162)
5. Savings Banks must qualify for and maintain status as a qualified thrift lender under the Internal Revenue Service Code. (54C-18)
6. Savings Banks may incorporate in either a stock or mutual form of ownership. (54C-10)
7. Savings and loans and State or national banks are authorized to convert to the Savings Bank charter. (54C-30)
8. Savings Banks are under the supervision of the Savings Institutions Administrator because they will be primarily housing lenders. (54C-52)

The principal advantages to the Savings Bank are:

1. Elimination of the cost of and supervision by the Office of Thrift Supervision. State chartered savings and loans must pay for and observe the regulations of the FDIC, OTS and the State. State chartered savings banks will pay for and be regulated by the FDIC and the State.
2. Elimination of the qualified thrift lender requirements of the Home Owners Act ("HOLA"). A State chartered savings and loan must satisfy the qualified thrift lender tests under both the IRS Code and HOLA and these two requirements are substantially different. A State chartered Savings Bank will only be required to satisfy the IRS Code test.
3. Basic parity of regulation with State chartered banks to achieve competitive equality.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S O R H D

Proposal 2 (DR91-RO-009)

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Funeral and Burial Trust Act (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FUNERAL AND BURIAL TRUST FUND ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.30 reads as rewritten:

"§ 90-210.30. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) ~~"Commissioner" means the Commissioner of Banks of this State.~~
"Board means the North Carolina Board of Mortuary Science, as created pursuant to Article 13A of Chapter 90 of the General Statutes.
- (2) "Financial institution" means a bank, trust company or savings and loan association authorized by law to do business in this State;
- (3) ~~"Preneed burial funeral contract" means a~~ any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements, or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of

1 funeral services, or the furnishing or delivery of personal property,
2 merchandise, or services of any nature in connection with the final
3 disposition of a dead human body, to be furnished or delivered at
4 a time determinable by the death of the person whose body is to
5 be disposed of, but does not mean the furnishing of a cemetery lot,
6 crypt, niche, mausoleum, grave marker or monument.

7 (4) "Prearrangement insurance policy" means a life insurance policy,
8 annuity contract, or other insurance contract, or any series of
9 contracts or agreements in any form or manner, issued by an
10 insurance company authorized by law to do business in this state,
11 which, whether by assignment or otherwise, has for a purpose the
12 funding of a preneed funeral contract or an insurance-funded
13 funeral or burial prearrangement, the insured being the person for
14 whose service the funds were paid."

15 (5) "Insurance company" means any corporation, association,
16 partnership, society, order, individual or aggregation of individuals
17 engaging in or proposing or attempting to engage as principals in
18 any kind of insurance business, including the exchanging of
19 reciprocal or interinsurance contracts between individuals,
20 partnerships and corporations."

21 (6) "Preneed licensee" means a funeral establishment which has
22 applied for and has been granted a license to sell preneed funeral
23 contracts under the Article. Such license is also referred to in this
24 Article as a "preneed funeral establishment license."

25 (7) "Preneed funeral planning" means offering to sell or selling
26 preneed funeral contracts, as defined in G.S. 90-210.30(3), or
27 making other arrangements prior to death for the providing of
28 funeral services or merchandise."

29 Sec. 2. G.S. 90-210.31 reads as rewritten:

30 **"§ 90-210.31. Deposit of trust funds.**

31 (a) Except as provided in this section, all payments of money made to any person,
32 partnership, association ~~or~~, corporation, or other entity upon any preneed funeral
33 contract or any other agreement ~~or~~, contract, or prearrangement insurance policy, or
34 any series or combination of preneed funeral contracts or any other agreements ~~or~~,
35 contracts, or prearrangement insurance policies, but ~~not including~~ excluding the
36 furnishing of cemetery lots, crypts, niches, mausoleums, grave markers ~~or~~ and
37 monuments, which ~~has~~ have for a purpose or which by operation provide for the
38 furnishing or performance of funeral or burial services, or the furnishing or delivery
39 of personal property, merchandise, or services of any nature in connection with the
40 final disposition of a dead human body, to be furnished or delivered at a time
41 determinable by the death of the person whose body is to be disposed of, or the
42 providing of the proceeds of an insurance policy for such use are held to be trust
43 preneed funeral funds, and their receipt, application, and disposition shall be
44 deposited or applied as follows: The person, partnership, association or corporation

~~1 receiving the payments is declared to be a trustee thereof, and shall deposit all
2 payments in a financial institution. All of the interest, dividends, increases or
3 accretions of whatever nature earned by the funds deposited in a trust account shall
4 remain with the principal of such account and become a part thereof, subject to all of
5 the regulations concerning the principal of said fund herein contained. Consistent
6 with applicable tax laws, the trust fund may be charged with any taxes on said fund
7 by reason of any interest, dividends, increases or accretions earned thereon, and for
8 the reasonable charges paid by the trustee to itself or others for the preparation of
9 fiduciary tax returns reporting such income. The trustee may establish an individual
10 trust for each contract or a common trust fund for all contracts. The trust accounts
11 shall be carried in the name of the person, partnership, association or corporation to
12 whom pre-need payments are made, but accounting records shall be maintained
13 showing the amounts deposited and invested, and interest, dividends, increases and
14 accretions earned thereon, with respect to each purchaser's contract.~~

~~15 (a1) A funeral establishment licensed by the Commissioner may enter into an
16 inflation proof pre-need burial contract that establishes a fixed price for services and
17 merchandise to be furnished at a future date regardless of changes in the cost of
18 services and merchandise to the licensed funeral establishment. A licensed funeral
19 establishment that enters into an inflation proof pre-need burial contract may retain
20 ten percent (10%) of all payments on the contract upon filing with the Commissioner
21 a bond in the amount retained. The bond shall be in a form and with such surety or
22 sureties, including a letter of credit issued by an insured financial institution, as may
23 be required by the Commissioner, conditioned on compliance with G.S. 90-210.31(e1)
24 and G.S. 90-210.32(b). In the event of noncompliance with G.S. 90-210.31(e1) the
25 Commissioner shall disburse the proceeds of the bond in accordance with G.S.
26 90-210.31(e1), and in the event of noncompliance with G.S. 90-210.32(b) the
27 Commissioner shall disburse the proceeds to the party who made the payments to the
28 licensed funeral establishment. That portion of all payments on the contract not
29 retained by the licensed funeral establishment shall be deposited in a trust fund as
30 provided in subsection (a) of this section.~~

~~31 (b) All payments made under the agreement, contract or plan are and shall remain
32 trust funds with the financial institution until the death of the person for whose
33 service the funds were paid and until the delivery of all merchandise and full
34 performance of all services called for by the agreement, contract or plan, except
35 where payment is made pursuant to G.S. 90-210.32. The trust fund shall be
36 established in an insured account in a financial institution and may be transferred
37 from one approved financial institution to another.~~

~~38 (c) Upon the death of the beneficiary of a pre-need burial contract, the financial
39 institution shall not pay funds it holds in trust under this section to the licensed
40 funeral establishment until a certified statement is furnished to the financial
41 institution that all terms and conditions of the contract have been fully performed by
42 the licensed funeral establishment. Unless otherwise specified in the agreement,
43 contract or plan, the said person, partnership, association or corporation shall have
44 no obligation to deliver any merchandise or perform any services for which payment~~

1 in full has not been deposited in the financial institution, and any amounts deposited
2 which do not constitute payment in full shall be refunded to the estate of the
3 deceased beneficiary of the plan or credited against the cost of merchandise or
4 services contracted for by representatives of the deceased. Any balance remaining in
5 the fund after payment for the merchandise and services as set forth in the
6 agreement, contract or plan shall be paid to the estate of the beneficiary of the
7 agreement, contract or plan.

8 (c1) In the event that a person, partnership, association, or corporation other than
9 the contracting licensed funeral establishment to a pre-need burial contract provides
10 the services, merchandise or personal property described in the contract for the
11 beneficiary thereof, the funds deposited in a financial institution pursuant to G.S.
12 90-210.31(a) together with all interest, dividends, increases or accretions earned on
13 such fund and any amount retained by the licensed funeral establishment pursuant to
14 G.S. 90-210.31(a1) shall be paid to the provider of such services, merchandise or
15 personal property upon submission to the financial institution and the licensed
16 funeral establishment of a certified copy of the death certificate of the beneficiary and
17 a certified copy of the charges for the services, merchandise or personal property
18 provided for the deceased. Any balance remaining in the financial institution or
19 retained by the licensed funeral establishment after payment to the provider shall be
20 paid to the estate of the beneficiary of the contract. Upon making payment pursuant
21 to this subsection and giving notice of payment to the licensed funeral establishment,
22 the financial institution shall be relieved from all further liability. Upon making
23 payment pursuant to this subsection, the licensed funeral establishment shall be
24 relieved from all further liability. This subsection shall not apply if the pre-need
25 contract provides that it is irrevocable.

26 (d) Subsection (a) of this section does not apply to contracts for funeral service or
27 merchandise sold as burial insurance policies which are regulated by Part 13 of
28 Article 10 of Chapter 143B of the General Statutes.

29 (d1) This Article does not apply to pre-need burial contracts or prearrangements
30 for funeral services or merchandise funded, at the direction of the purchaser, with the
31 proceeds of any insurance policy regulated by Articles 1 through 64 of Chapter 58 of
32 the General Statutes.

33 (e) The Commissioner shall approve forms for pre-need burial contracts. All such
34 contracts must be in writing, and no contract form shall be used without prior
35 approval of the Commissioner. Any use or attempted use of an oral pre-need burial
36 contract or any written pre-need burial contract in a form not approved by the
37 Commissioner shall be deemed to be a violation of this Article by the person selling
38 services or merchandise thereunder.

39 (1) Any payment of money made by a preneed funeral contract
40 purchaser who chooses to have such funds placed in a financial
41 institution shall, within the required period of time, be deposited
42 by the preneed licensee in the manner hereinafter provided in a
43 financial institution, in trust, in the preneed licensee's name as
44 trustee. Thereafter, all of the interest, dividends, increases or

1 accretions of whatever nature earned by the funds shall remain
 2 with the principal and shall become a part thereof, subject to all of
 3 the requirements concerning the principal hereinafter contained.
 4 Consistent with applicable tax laws, the trust fund may be charged
 5 with any taxes on said fund and its income, and for the reasonable
 6 charges paid by the trustee to itself or others for the preparation of
 7 fiduciary tax returns reporting such income. Penalties charged by
 8 a financial institution for early withdrawal of a deposit caused by a
 9 transfer pursuant to G.S. 90-210.35(b) shall be paid by the preneed
 10 licensee. Penalties charged as a result of all other early
 11 withdrawals as permitted by this Article shall be paid from the
 12 trust fund, and the financial institution shall give the purchaser
 13 prompt notice of all such penalties. The preneed licensee, as
 14 trustee, may establish an individual trust for each preneed contract
 15 or a common trust fund for all preneed funeral contracts. The
 16 trust accounts shall be carried in the name of the preneed licensee
 17 as trustee, but accounting records shall be maintained showing the
 18 amounts deposited and invested, and interest, dividends, increases
 19 and accretions earned thereon, with respect to each purchaser's
 20 contract.

21 (2) Notwithstanding any other provision of law, a preneed licensee
 22 who enters into a preneed funeral contract with a purchaser who
 23 funds such contract with a trust deposit pursuant to subsection
 24 (a)(1) hereof may retain, free of the trust, up to 10% of any
 25 payments made on such contract, provided that:

26 (A) The preneed licensee fully discloses in writing to the contract
 27 purchaser in advance the percentage in intends to retain from any
 28 payments made on the contract.

29 (B) If the preneed licensee thereafter performs any services or
 30 provides any goods or merchandise under such contract, the
 31 preneed licensee shall give the purchaser credit for the amount
 32 retained.

33 (3) Any payment received by a preneed licensee from a purchaser of a
 34 preneed funeral contract who chooses to purchase a
 35 prearrangement insurance policy, shall within the required period
 36 of time, be applied by the preneed licensee to the purchase of such
 37 policy.

38 (b) Except as provided by subsection (a)(2) hereof or by G.S. 90-210.32, all
 39 payments made by the purchaser of a preneed funeral contract or prearrangement
 40 insurance policy are and shall remain trust funds within a financial institution or as
 41 paid insurance premiums with an insurance company, as the case may be, until the
 42 death of the person for whose service the funds were paid and until delivery of all
 43 merchandise and full performance of all services called for by the preneed funeral
 44 contract or prearrangement insurance policy.

1 (c) Each preneed licensee may establish and maintain with a financial institution of
2 its choice, a preneed funeral fund clearing account. Preneed funeral funds received
3 by a preneed licensee may be deposited and held in such an account until disbursed
4 by the preneed licensee to fund a preneed funeral contract pursuant to subsection
5 (a)(1) or (a)(3) hereof. Such account shall be maintained and used solely for the
6 receipt and disbursement of preneed funeral funds.

7 (d) Funds deposited in trust under a revocable standard preneed funeral contract
8 entered into on or after January 1, 1992, may, with the written permission of the
9 contract purchaser, be withdrawn and used to purchase prearrangement insurance
10 policies. Except as provided in this subsection, no funds deposited in trust in a
11 financial institution pursuant to this Article shall be withdrawn to purchase
12 prearrangement insurance policies.

13 Sec. 3. Chapter 90 is amended by adding a new section to Article 13B to
14 read:

15 **"§ 90-210.31A. Types of preneed contracts; revocability; disposition of funds;**
16 **substitution of licensees; forms.**

17 (a) A preneed licensee may make preneed arrangements available through
18 standard and inflation-proof preneed funeral contracts. Standard preneed funeral
19 contracts apply all monies paid by or for the contract beneficiary, together with any
20 increases to the trust fund and all insurance proceeds, for the purchase of funeral
21 services and merchandise without a guarantee against price increases. Inflation-proof
22 contracts establish a fixed price for funeral services and merchandise without regard
23 to price increases. Upon written disclosure, inflation-proof contracts may permit the
24 preneed licensee to retain all of the preneed funeral contract trust funds on deposit,
25 and all insurance proceeds, even those in excess of the retail cost of goods and
26 services provided, when the preneed licensee has fulfilled the contract obligation.

27 (b) At the option of the preneed funeral contract purchaser, such contracts may
28 be made revocable or irrevocable. If the contract is made irrevocable, the purchaser,
29 and after his death the beneficiary, or the beneficiary's legal representative, may,
30 upon written notice given to the financial institution or insurance company and the
31 preneed licensee which is a party to the contract, direct the substitution of a different
32 preneed licensee to furnish funeral services and merchandise. Such substitution may
33 be made either before or after the death of the beneficiary of the preneed funeral
34 contract; provided, however, if the substitution is made after the death of the preneed
35 funeral contract beneficiary, a funeral establishment providing any funeral services or
36 merchandise need not be a preneed licensee under this Article to receive payment for
37 such services or merchandise. Provided, further, if a substitution of trustee occurs
38 after the death of the contract beneficiary, the original contracting preneed licensee
39 shall be entitled to payment for any services or merchandise provided pursuant to
40 G.S. 90-210.32(d).

41 Upon receipt of such notice, the financial institution shall immediately pay the
42 funds held therein pursuant to G.S. 90-210.31(a)(1), together with all accumulated
43 interest, dividends, increases and accretions thereon, to the preneed licensee which is
44 a party to the preneed funeral contract. If the preneed funeral contract is funded by

1 a prearrangement insurance policy, the insurance company shall not pay any of the
2 funds until the death of the beneficiary of the contract. The preneed licensee which
3 is party to the preneed funeral contract shall immediately pay all such funds received
4 to the successor funeral establishment so designated; provided, however, the
5 contracting preneed licensee shall not be required to give credit for the amount
6 retained pursuant to G.S. 90-210.31(a)(2). Provided further, if the contracting
7 preneed licensee did not retain any portion of payments made to it as is permitted by
8 G.S. 90-210.31(a)(2), then such preneed licensee may retain up to ten percent (10%)
9 of said funds received from the financial institution.

10 Upon making payments pursuant to this subsection, the financial institution and
11 the preneed licensee which is a party to the preneed funeral contract shall be relieved
12 from all further contractual liability thereon.

13 The person giving notice of this substitution of preneed licensee and the successor
14 preneed licensee shall enter into a new preneed funeral contract for the funds
15 transferred, and this Article shall apply, including the duty of the successor preneed
16 licensee to deposit funds in a financial institution if the death of the beneficiary of the
17 preneed funeral contract has not occurred. Nothing in this subsection shall be
18 construed to permit an irrevocable preneed funeral contract to be made revocable or
19 to result in the payment of any of the transferred funds to the purchaser or to the
20 beneficiary of the preneed funeral contract or his estate, except as provided by
21 subsection (c) hereof.

22 (c) When a preneed licensee has fulfilled its contractual obligation upon the death
23 of a preneed funeral contract beneficiary, the preneed licensee shall promptly
24 complete a certificate of performance and present the same to the financial institution
25 which holds funds in trust under G.S. 90-210.31(a)(1), or to the insurance company
26 which issued a preneed insurance policy pursuant to G.S. 90-210.31(a)(3). The
27 financial institution or insurance company on receipt of the certificate of performance
28 shall pay to the preneed licensee which is a party to the contract the trust funds or
29 policy proceeds.

30 Unless otherwise specified in the preneed funeral contract, the preneed licensee
31 shall have no obligation to deliver merchandise or perform any services for which
32 payment in full has not yet been deposited with a financial institution or which shall
33 not be provided by the proceeds of a prearrangement insurance policy, and any such
34 amounts received which do not constitute payment in full shall be refunded to the
35 estate of the deceased contract beneficiary or credited against the cost of merchandise
36 or services contracted for by a representative of the deceased; and any balance
37 remaining in the fund or policy after payment for the merchandise and services as set
38 forth in the preneed funeral contract or the insurance beneficiary named to receive
39 any such balance. Provided, however, unless the parties agree to the contrary, there
40 shall be no refund to the estate of a deceased beneficiary of an inflation-proof
41 preneed funeral contract.

42 (d) In the event that any person, partnership or corporation, other than the
43 contracting preneed licensee, shall perform any funeral service or provide any
44 merchandise under a preneed funeral contract upon the death of the beneficiary

1 thereof, the trust funds held on deposit with a financial institution pursuant to G.S.
2 90-210.31(a)(1), or preneed insurance proceeds held by an insurance company
3 pursuant to G.S. 90-210.31(a)(3), shall be paid by the contracting preneed licensee to
4 such provider upon submission to the contracting preneed licensee and the financial
5 institution or insurance company, as the case may be, of a certified copy of the
6 contract beneficiary's death certificate, a copy of the statement of charges for the
7 services and merchandise provided and a certificate of performance.

8 In the event that a credit for a retention is due a preneed funeral contract
9 beneficiary from a contracting preneed licensee which has retained any portion of
10 preneed payments made on such contract pursuant to G.S. 90-210.31(a)(2), and that
11 credit is not given upon the death of the contract beneficiary, G.S. 90-210.31B shall
12 apply.

13 (e) This Article does not apply to contracts for funeral services or merchandise
14 sold as preneed burial insurance policies which are regulated by Part 13 of Article 10
15 of Chapter 143B of the North Carolina General Statutes.

16 (f) The board shall approve all forms for preneed funeral contracts. All such
17 contracts must be in writing, and no form shall be used without prior approval of the
18 Board. Any use or attempted use of any oral preneed funeral contract or any written
19 contract in a form not approved by the Board shall be deemed a violation of this
20 Article by the person selling the services or merchandise thereunder.

21 (g) Whenever any balance of a preneed funeral fund shall be payable to the estate
22 of a deceased contract beneficiary and there has been no representative of the estate
23 appointed to whom payment may be made, the same may be paid into the Office of
24 the Clerk of Superior Court in the county wherein probate proceedings could be
25 filed for the deceased beneficiary.

26 Sec. 4. Chapter 90 is amended by adding a new section to Article 13B to
27 read:

28 **"§ 90-210.31B. Recovery fund.**

29 (a) There is established the Preneed Recovery Fund. The Fund shall be
30 administered by the Board under rules adopted by it. The purpose of the fund is to
31 reimburse purchasers of preneed funeral contracts who have suffered financial loss as
32 a result of the malfeasance, misfeasance, default, failure or insolvency of any licensee
33 under this Article.

34 (b) From the fee of \$15.00 for each contract as required by G.S. 90-210.34(c) the
35 Board will deposit \$2.00 per contract into the fund. The Board may suspend the fee
36 at any time and for any period for which the Board determines that a sufficient
37 amount is available to meet likely disbursements and that an adequate reserve will
38 remain after such disbursements.

39 (c) All sums received by the Board pursuant to this section shall be held in a
40 separate account known as the Preneed Recovery Fund. Deposits to and
41 disbursements from the Fund account shall be subject to the written direction of the
42 Board under rules established by it.

1 (d) The Board shall adopt rules governing management of the Fund account,
2 presentation and processing of applications for reimbursement, and subrogation or
3 assignment of the rights of any reimbursed applicant.

4 (e) The Board may use or otherwise expend monies in the Fund for the following
5 purposes:

6 (1) To make reimbursements on approved applications;

7 (2) To purchase insurance to cover such losses, in whole or in part,
8 deemed appropriate by the Board and not inconsistent with the
9 purposes of the Fund;

10 (3) To invest such portions of the Fund as are not currently needed to
11 reimburse losses and maintain adequate reserves, and as are
12 permitted to be made by fiduciaries under state law; and

13 (4) To pay the expenses of the Board to administer the Fund,
14 including employment of legal counsel to prosecute subrogation
15 claims.

16 (f) Reimbursements from the Fund shall be made only to the extent to which such
17 losses are not bonded or otherwise covered, protected or reimbursed and only after
18 the applicant has complied with all applicable rules of the Board.

19 (g) The Board shall investigate all applications made and may reject or allow such
20 claims in whole or in part based on and to the extent that monies are available in the
21 fund. The Board shall have complete discretion to determine the order and manner
22 of payment of approved applications. All such payments shall be a matter of
23 privilege and not of right, and no person shall have any right in the fund as a third
24 party beneficiary or otherwise. No attorney shall be compensated by the Board for
25 prosecuting an application before it.

26 (h) In the event reimbursement is made to an applicant under this section, the
27 Board shall be subrogated in the reimbursed amount and may bring such action as
28 deemed advisable against any person or corporation, including the licensee. The
29 Board may enforce any claims it may have for restitution or otherwise and may
30 employ and compensate consultants, agents, legal counsel, accountants and other such
31 persons as it deems appropriate to carry out its authority under this section."

32 Sec. 5. G.S 90-210.32 reads as rewritten:

33 **"§ 90-210.32. Refund of deposit.**

34 ~~(a) Within 30 days of receipt of a written demand for refund by any party who has~~
35 ~~paid funds under a pre-need burial request from the purchaser of a revocable~~
36 ~~preneed funeral contract who has contract funds deposited with a financial institution~~
37 ~~pursuant to G.S. 90-210.31(a)(1), the financial institution with which such funds have~~
38 ~~been deposited holding such funds in trust shall refund to such party the contract~~
39 ~~purchaser the entire amount deposited with the financial institution together with all~~
40 ~~interest, dividends, increases, or accretions earned on such fund.~~

41 ~~(b) Within 30 days of receipt of a written demand for refund by any party who has~~
42 ~~paid funds under a pre-need burial contract, the licensed funeral establishment that~~
43 ~~has retained any portion of the payments pursuant to G.S. 90-210.31(a1) shall refund~~
44 ~~to such party the entire principal amount retained by the licensed funeral~~

1 ~~establishment without any interest, dividends, increases or accretions earned on such~~
2 ~~fund.~~

3 (b1) Within 30 days of receipt of a written notice of cancellation of any
4 prearrangement insurance policy purchased pursuant to G.S. 90-210.31(a)(3), the
5 issuing insurance company shall refund to the prearrangement insurance policy
6 purchaser any unearned premiums.

7 (c) After making refund pursuant to this section and giving notice of the refund to
8 ~~the contracting licensed funeral establishment preneed licensee~~, the financial
9 institution shall be relieved from all further liability. ~~After making refund pursuant to~~
10 ~~this section, the licensed funeral establishment shall be relieved from all further~~
11 ~~liability.~~

12 (c1) Notwithstanding any other provision of this Article, if a preneed funeral
13 contract is revoked or transferred following the death of the beneficiary, the
14 purchaser may be charged according to the contracting preneed licensee's price lists
15 for any services performed or merchandise provided prior to revocation or transfer.

16 (d) This section shall not apply if the pre-need ~~burial~~ funeral contract provides
17 that it is irrevocable. Such contracts may not be revoked or any proceeds thereof
18 refunded except by order of a court of competent jurisdiction.

19 Sec. 6. G.S. 90-210.33 reads as rewritten:

20 "**§ 90-210.33. Deposit within 30 days of receipt.**

21 (a) All trust funds mentioned in this Article shall be deposited in the name of the
22 trustee, as trustee. Except as provided in this Article, all preneed funeral funds
23 received by a preneed licensee pursuant to the provisions of G.S. 90-210.31(a)(1)
24 shall, within 30 ten days after receipt thereof, be deposited by such licensee in with a
25 financial institution and shall be held together with the interest, dividends, or
26 accretions thereon, in trust, subject to the provisions of this Article. The trustee at
27 the time of making deposit shall furnish to the financial institution the name of each
28 payer, and the amount of payment on each account for which the deposit is being
29 made in the preneed licensee's name as trustee.

30 (b) Premiums received by a preneed licensee in payment for prearrangement
31 insurance policies pursuant to the provisions of G.S. 90-210.31(a)(3) shall be applied
32 to the purchase of such policies within ten days of receipt of the same.

33 (c) If a preneed funeral contract purchaser elects to fund such contract with a trust
34 deposit, the preneed licensee, at the time of making the deposit as trustee, shall
35 furnish to the financial institution the name of each payer and the amount of
36 payment on each for which the deposit is being made.

37 (d) If a preneed funeral contract purchaser elects to fund such contract with a
38 prearrangement insurance policy, the preneed licensee shall notify the insurance
39 company of the name of each payer and the amount of each payment when such
40 policy or policies have been purchased.

41 (e) Except as provided by G.S. 90-210.31(c), at no time before making a deposit or
42 purchasing a prearrangement insurance policy may a preneed licensee, or its agents
43 or employees, deposit in its or their own account or the account of any other person,
44 partnership, association, corporation, or entity any monies coming into its or their

1 hands for the purpose of purchasing services, merchandise, or prearrangement
2 insurance under the provisions of this Article.

3 Sec. 7. G.S. 90-210.34 reads as rewritten:

4 "**§ 90-210.34. Application for license.**

5 (a) No person, firm, partnership, association or corporation may, ~~without first~~
6 ~~securing from the Commissioner a license, accept and/or hold payments made on~~
7 ~~pre-need burial contracts, except financial institutions as defined in G.S. 90-210.30(2)~~
8 hereof offer or sell preneed funeral contracts or offer to make or make any funded
9 funeral prearrangements, whether funded by prearrangement insurance policies, trust
10 deposits or otherwise, without first securing a license from the Board. There shall be
11 two types of licenses: a preneed funeral establishment license and a preneed sales
12 license. Only funeral establishments holding a valid establishment permit pursuant to
13 G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license
14 hereunder. Employees and agents of such entities, upon meeting the qualifications to
15 engage in preneed funeral planning as established by the Board, shall be eligible for a
16 preneed sales license. Such employees and agents may sell preneed funeral contracts,
17 prearrangement insurance policies and make funded funeral prearrangements only on
18 behalf of and to be performed by one employer or one principal; provided, however,
19 such employees and agents may sell preneed funeral prearrangements for any number
20 of funeral establishments licensed under this Article which are wholly-owned by or
21 affiliated, through common ownership or contract, with the same entity; provided
22 further, in the event such agents and employees engage in prearrangement insurance
23 sales, these agents shall meet the licensing requirements of the Commissioner of
24 Insurance. Every preneed funeral contract shall be signed by a person licensed as a
25 funeral director or funeral service licensee pursuant to Article 13A, Chapter 90.

26 Application for a license shall be in writing, signed by the applicant and duly
27 verified on forms furnished by the ~~Commissioner~~ Board. Each application shall
28 contain at least the following: the full names and address (both residence and place of
29 business) of the applicant, and every ~~member,~~ officer and director thereof if the
30 applicant is a firm, partnership, association or corporation and any other information
31 as the Board shall deem necessary. Any A preneed funeral establishment license
32 ~~issued pursuant to the application~~ shall be valid only at the address stated in the
33 application for the applicant or at a new address approved by the ~~Commissioner~~
34 Board.

35 (b) ~~Each~~ An application for a preneed funeral establishment license shall be
36 accompanied by a nonrefundable ~~investigation~~ application fee of not more than
37 ~~twenty five dollars (\$25.00)~~ \$250.00 and an application for a preneed sales license
38 shall be accompanied by a nonrefundable application fee of not more than \$100.00. If
39 the license is granted, the ~~investigation~~ application fee shall be applied to the
40 respective annual license fee for the first year or part thereof. Upon receipt of the
41 application and payment of the ~~investigation~~ application fee, the ~~Commissioner~~ Board
42 shall issue a renewable preneed funeral establishment license unless it determines that
43 the applicant has made false statements or representations in the application, or is
44 insolvent, or has conducted, or is about to conduct, his business in a fraudulent

1 manner, or is not duly authorized to transact business in this State. Upon receipt of
2 the application and payment of the application fee, the Board shall issue a renewable
3 preneed sales license provided the applicant has met the qualifications to engage in
4 preneed funeral planning as established by the Board pursuant to subsection (a)
5 hereof. Each licensee under this Article shall pay annually to the Commissioner
6 Board on or before June 30 of each year, a license fee of ~~twenty-five dollars (\$25.00)~~
7 not more than \$250.00 for a preneed funeral establishment license and not more than
8 \$100.00 for a preneed sales license.

9 (c) Any person selling a pre-need funeral service contract, whether funded by a
10 trust deposit or a prearrangement insurance policy, shall remit to the Board, within
11 ten days following the sale of such contract, a contract fee of \$15.00 for each sale.
12 Such fee shall not be remitted in cash. ~~shall collect from each purchaser a service~~
13 charge of ten dollars (\$10.00), and all of which fees so collected shall be remitted by
14 the person collecting same to the Commissioner at least once each month, and such
15 funds shall be used by the Commissioner in administering this Article.

16 (d) The fees collected under this Article, except for monies used pursuant to G.S.
17 90-210.31B, shall be used for the expenses of the Board in carrying out the provisions
18 of this Article. Any funds remaining with the Board after all expenses under this
19 Article for the current fiscal year have been fully provided for shall be paid over to
20 the general fund of the State of North Carolina. Provided, however, the Board shall
21 have the right to maintain an amount, the cumulative total of which shall not exceed
22 20% of gross receipts under this Article for the previous fiscal year of its operations,
23 as a maximum contingency or emergency fund.

24 Sec. 8. G.S 90-210.35 reads as rewritten:

25 "§ 90-210.35. Licensee's books and records; notice of transfers, assignments and
26 terminations.

27 (a) The Every preneed licensee shall keep for examination by the Board accurate
28 accounts, books, and records in this State of all preneed funeral contract and
29 prearrangement insurance policy transactions, copies of all agreements, insurance
30 policies, instruments of assignment, the dates and amounts of payments made and
31 accepted thereon, the names and addresses of the contracting parties, the persons for
32 whose benefit funds are accepted, and the names of the depositories of the financial
33 institutions holding preneed funeral trust funds and insurance companies issuing
34 prearrangement insurance policies. ~~The licensee shall make all books and records~~
35 pertaining to the trust funds available to the Commissioner for examination. The
36 Commissioner The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its
37 examiners, which the Board may appoint to assist in the enforcement of this Article,
38 may at any time investigate the books, records, and accounts of the any licensee
39 under this Article with respect to its trust funds, preneed funeral contracts, and
40 prearrangement insurance policies, and for that purpose the Board may require the
41 attendance of and examine under oath all persons whose testimony it may require.

42 (b) ~~Before any trust funds may be transferred~~ A preneed licensee may transfer
43 preneed funds held by it as trustee form the financial institution which is a party to a
44 preneed funeral contract to a substitute financial institution that is not a party to a

1 ~~pre-need burial~~ the contract; Within ten days after the transfer, the preneed
 2 licensee shall notify the Commissioner Board, in writing, of the name and address of
 3 the intended transferee financial institution; and before. Before the transfer may be
 4 made, the transferee financial institution shall agree to make the ~~disclosure~~
 5 disclosures required under the pre-need ~~burial~~ funeral contract to the ~~Commissioner~~
 6 Board or his its designated-examiner inspectors or examiners. If the contract is
 7 revocable, the licensee shall notify the contracting party of the intended transfer.

8 (c) In the event that any preneed licensee should transfer or assign its assets or
 9 stock to a successor funeral establishment or terminate its business as a funeral
 10 establishment, the preneed licensee and assignee shall notify the ~~Commissioner~~ Board
 11 within 15 days ~~after~~ prior to the effective date of said transfer, assignment or
 12 terminations: provided, however, the successor funeral establishment must be a
 13 preneed licensee or shall be required to apply for and be granted such license by the
 14 Board before accepting any preneed funeral contracts, whether funded by trust
 15 deposits or preneed insurance policies. Provided further, a successor funeral
 16 establishment shall be liable to the preneed funeral contract purchasers for the
 17 amount of contract payments retained by the assigning or transferring funeral home
 18 pursuant to G.S. 90-210.31(a)(2).

19 (d) Financial institutions which accept preneed funeral trust funds pursuant to G.S.
 20 90-210.31(a)(1) and insurance companies which issue prearrangement insurance
 21 policies pursuant to G.S. 90-210.31(a)(3), shall, upon request by the Board or its
 22 inspectors or examiners, disclose any information regarding preneed funeral trust
 23 accounts held or prearrangement insurance policies issued by it for a preneed
 24 licensee.

25 (e) In the event that any preneed licensee is unable or unwilling or is for any
 26 reason relieved of its responsibility to perform as trustee or to perform any preneed
 27 funeral contract, the Board, with the written consent of the purchaser, or after the
 28 purchaser's death or incapacity, the beneficiary of the preneed funeral contract, may
 29 order the contract to be assigned to a substitute preneed licensee provided that the
 30 substitute licensee agrees to accept such assignment.

31 Sec. 9. G.S. 90-210.36 reads as rewritten:

32 "**§ 90-210.36. Enforcement of Article.**

33 (a) The Commissioner Board shall enforce the provisions of this Article and has
 34 the power to make investigations, subpoena witnesses, require audits and reports and
 35 conduct order hearings as to violations of any provisions, and to establish of this
 36 Article. The board shall have the authority to refuse to issue or to suspend or revoke
 37 a preneed funeral establishment license and a preneed sales license when the
 38 applicant or holder thereof has been convicted of a felony or any crime involving
 39 fraud or moral turpitude, or when the applicant or holder thereof has violated any
 40 provision of this Article or the rules adopted pursuant thereto. The Board shall have
 41 the authority to require such reports and informations and to adopt such rules and
 42 regulations as are necessary to carry out the provisions of this Article.

43 Sec. 10. G.S. 90-210.37 reads as rewritten:

44 "**§ 90-210.37. Penalties.**

1 (a) Anyone who embezzles or who fraudulently, or knowingly and willfully
2 misapplies, or in any manner converts preneed funeral funds to his own use, or for
3 the use of any partnership, corporation, association, or entity for any purpose other
4 than as authorized by this Article; or anyone who takes makes away with or secretes,
5 with intent to embezzle, or fraudulently, or knowingly and willfully misapply or in
6 any manner convert preneed funeral funds for his own use or the use of any
7 corporation, partnership, association, or entity for any purpose other than as
8 authorized by this Article shall be punished as a Class H felon. Each such
9 embezzlement, conversion, or misapplication shall constitute a separate offense, and
10 may be prosecuted individually. Upon conviction, all licenses issued under this
11 Article shall be revoked.

12 (b) Any person who willfully ~~violating~~ violates the provisions any other provision
13 of this Article shall be guilty of a misdemeanor and shall be fined not less than five
14 hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000), or shall be
15 imprisoned for not less than 10 days nor more than six months, or both. Each such
16 violation shall constitute a separate offense, and may be prosecuted individually.

17 (c) If a corporation embezzles, or fraudulently, or knowingly and willfully
18 misapplies or converts preneed funeral funds as provided in subsection (a) hereof or
19 otherwise violates any provision of this Article, the officers, directors, agents, or
20 employees responsible for committing the offense shall be fined or imprisoned as
21 herein provided.

22 (d) The Board shall deliver to the Attorney General all evidence of violations
23 pursuant to this section, and the Attorney General may initiate criminal actions, to be
24 prosecuted by the District Attorneys as provided by law.

25 Sec. 11. G.S. 90-210.28 reads s rewritten:

26 "§ 90-210.38. Nonregulation of insurance sales.

27 The provisions of this Article do not regulate the issuance and sale of insurance
28 policies, but apply only to the underlying preneed funeral contracts, whether funded
29 by insurance or trust deposits.

30 Sec 12. G.S. 90-210.18(b) reads as rewritten

31 "§ 90-210.18. Construction of Article; State Board; members; election; qualifications;
32 term; vacancies.

33 (b) The North Carolina Board of Mortuary Science is created as a continuation of
34 the North Carolina Board of Embalmers and Funeral Directors. The Board is the
35 agency for regulation of the practice of funeral service in this State. The Board shall
36 have seven ~~nine~~ members as follows:

37 (1) Four funeral service licensees or persons holding both funeral
38 director's license and an embalmer's license,

39 (2) Two persons holding a funeral director's license or a funeral
40 service license, and

41 (3) ~~One~~ Three public ~~member~~ members. A member's term shall be
42 three years and shall expire on December 31 or when his successor
43 has been duly elected or appointed. No member may serve more
44 than two complete consecutive terms.

1 The six seats on the Board for licensees shall be filled in an election in which
2 every person licensed to practice embalming, funeral directing, or funeral service in
3 this State may vote. No licensee may be nominated, elected, or serve unless he holds
4 a North Carolina license in the class designated for the seat and unless he is engaged
5 in full-time employment in this State in a practice authorized by his license. Any
6 vacancy occurring in an elective seat on the Board shall be filled for the unexpired
7 term by majority vote of the remaining Board members.

8 The public ~~member~~ members of the Board shall have full voting authority. ~~He~~
9 They shall be appointed by the Governor and may neither be licensed under this
10 Article nor employed by a person who is. A vacancy occurring in ~~the~~ a public
11 member's seat shall be filled for the unexpired term by the Governor.

12 Sec. 13. G.S. 90-210.22 reads as rewritten:

13 "**§ 90-210.22. Required meetings of the Board.**

14 The Board shall hold at least two meetings in each year at which examinations
15 shall be given to qualified applicants for licenses. In addition, the Board may meet as
16 often as the proper and efficient discharge of its duties shall require. ~~Four~~ Five
17 members shall constitute a quorum."

18 Sec. 14. (a) This Act shall become effective January 1, 1992, and shall
19 apply to preneed funeral contracts and funded funeral prearrangements made and
20 entered into on or after that date. G.S. 90-210.31B shall apply to losses which arise
21 after the effective date of this Act.

22 (b) Any entity licensed by the Commissioner of Banks under Article 13B
23 of Chapter 90 of the General Statutes before the effective date of this Act shall be
24 entitled to have its license renewed notwithstanding that it is not a funeral
25 establishment, provided it otherwise satisfies the requirements of this Article.

Explanation of Legislative Proposal 2

Legislative Proposal 2 amends the Funeral and Burial Trust Fund Act. The most important change is to transfer oversight and regulation of preneed contracts from the Commissioner of Banks to the North Carolina Board of Mortuary Science.

The bill also clarifies the fiduciary duties of funeral establishments which enter into preneed contracts and defines the various types of preneed contracts.

A Preneed Recovery Fund would be established to reimburse purchasers of preneed contracts who have suffered financial loss as a result of malfeasance, misfeasance, default, failure, or insolvency of persons licensed under this act.

The bill also increases the annual fee for a license from \$25.00 to \$250.00 and the per contract charge from \$10.00 to \$15.00.

The Board of Mortuary Science is authorized to enforce the provisions of the act and to suspend or revoke any licenses issued under it. Upon conviction of embezzlement or conversion of trust funds, all licenses issued under this Article shall be revoked.

The membership of the North Carolina Board of Mortuary Science would be increased from seven to nine to add two additional public members.

The act becomes effective January 1, 1992.

NORTH CAROLINA GENERAL ASSEMBLY

SESSION 1991

DRAFT PROPOSED BILL

H OR S

D

Proposal 3 (DR91-RO-005)

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Banking Technical Amendments (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN TECHNICAL AMENDMENTS TO THE
3 BANKING LAWS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 53-20(h) reads as rewritten:
6 "(h) Bond of Commissioner of Banks; Surety; Condition; Minimum Penalty. --
7 Upon taking possession of any bank, the Commissioner of Banks, or the duly
8 appointed agent, shall execute and file a bond payable to the State of North Carolina,
9 with some surety company as surety thereon, with the clerk of the superior court of
10 the county where the bank is located, conditioned upon the faithful performance of
11 all duties imposed by reason of the liquidation of such bank by the said
12 Commissioner of Banks, or the duly appointed agent, or any agent or assistant
13 assisting in the liquidation of the said bank, the penal sum of said bond to be fixed by
14 order of the Commissioner of Banks, which in no case shall be less than five
15 thousand dollars (\$5,000). Any person interested, by motion in the pending action,
16 shall be heard by the resident or presiding judge as to the sufficiency of the bond; the
17 judge hearing the motion may thereupon fix the bond; provided, that where such
18 bank under this section is taken possession of by the Commissioner of Banks, he may,
19 in his discretion with the approval of the State Banking Commission, appoint as his

1 agent with the powers, duties and responsibilities of such agent under this section, the
2 Federal Deposit Insurance Corporation or any corporation or agency established
3 under and by virtue of the laws of the United States of America which is established
4 for the purposes for which the said Federal Deposit Insurance Corporation was
5 created under the Banking Act of 1933, enacted by Congress; and provided further
6 that such appointment may be made when and only when the liabilities of such bank
7 to its depositors are insured by said corporation or agency, either in whole or in part.
8 In the event of such appointment such corporation or agency, with the approval of
9 the Commissioner of Banks, may serve as such agent without giving the bond
10 required under all other circumstances in this subsection. Also, in the event of such
11 appointment, the Commissioner of Banks shall thereafter be forever relieved from
12 any and all responsibility and liability in respect to the liquidation of such bank.

13 Sec. 2. G.S. 53-47 reads as rewritten:

14 **"§ 53-47. Limitations on investment in stocks.**

15 No bank shall make any investment in the capital stock of any other state or
16 national bank: Provided, that nothing herein shall be construed to prevent banks
17 doing business under this Chapter from subscribing to or purchasing, upon such
18 terms as may be agreed upon, the capital stock of clearing corporations as defined in
19 G.S. 25-8- 102(3), the capital stock of banks organized under that act of Congress
20 known as the "Edge Act", ~~or~~ the capital stock of central reserve banks whose capital
21 stock exceeds one million dollars (\$1,000,000), or the Federal Home Loan Bank. To
22 constitute a central reserve bank as contemplated by this Chapter, at least fifty
23 percent (50%) of the capital stock of such bank shall be owned by other banks. The
24 investment of any bank in the capital stock of such central reserve bank or bank
25 organized under the act of Congress commonly known as the "Edge Act," shall at no
26 time exceed ten percent (10%) of the paid-in capital and permanent surplus of the
27 bank making same. No bank shall invest more than seventy-five percent (75%) of its
28 unimpaired capital fund in the stocks of other corporations, firms, partnerships, or
29 companies, unless such stock is purchased to protect the bank from loss. The
30 foregoing limitation shall not apply to stock or ownership interests acquired in
31 corporations, firms, partnerships or companies which hold banking premises or which
32 are bank operating subsidiaries of such bank. The term "invest" shall be deemed to
33 include operating a business entity acquired by the bank, provided, however, that no
34 bank shall make any such investment resulting in operations which are not closely
35 related to banking without the prior written approval of the Commissioner of Banks.
36 The Commissioner of Banks shall monitor the impact of investment activities of
37 banks under this section on the safety and soundness of such banks. Any stocks
38 owned or hereafter acquired in excess of the limitations herein imposed shall be
39 disposed of at public or private sale within six months after the date of acquiring the
40 same, and if not so disposed of they shall be charged to profit and loss account, and
41 no longer carried on the books as an asset. The limit of time in which said stocks
42 shall be disposed of or charged off the books of the bank may be extended by the
43 Commissioner of Banks if in his judgment it is for the best interest of the bank that
44 such extension be granted; provided that the limitations imposed in this section on

1 the ownership of stock in or securities of corporations is suspended to the extent (and
2 to that extent only) that any bank operating under the supervision of the
3 Commissioner of Banks may subscribe for and purchase shares of stock in or
4 debentures, bonds or other types of securities of any corporation organized under the
5 laws of the United States of America for the purpose of insuring to depositors a part
6 or all of their funds on deposit in banks where and to such extent as such stock or
7 security ownership is required in order to obtain the benefits of such deposit
8 insurance for its depositors.

9 Sec. 3. G.S. 53-59 is repealed.

10 Sec. 4. G.S. 53-87 reads as rewritten:

11 **"§ 53-87. Directors may declare dividends.**

12 The board of directors of any bank may declare a dividend of so much of its
13 undivided profits as they may deem expedient, subject to the requirements hereinafter
14 provided. When the surplus of any bank having a capital stock of fifteen thousand
15 dollars (\$15,000) or more is less than fifty percent (50%) of its paid-in capital stock,
16 such bank shall not declare any dividend until it has transferred from undivided
17 profits to surplus twenty-five percent (25%) of said undivided profits, or any lesser
18 percentage that may be required to restore the surplus to an amount equal to fifty
19 percent (50%) of the paid-in capital stock. When the surplus of any bank having a
20 capital stock of less than fifteen thousand dollars (\$15,000) is less than one hundred
21 percent (100%) of its paid-in capital stock, such bank shall not declare any dividend
22 until it has transferred from undivided profits to surplus fifty percent (50%) of said
23 undivided profits, or any lesser percentage that may be required to restore the surplus
24 to an amount equal to one hundred percent (100%) of the paid-in capital stock. In
25 order to ascertain the undivided profits from which such dividend may be made,
26 there shall be charged and deducted from the actual profits:

- 27 (1) All ordinary and extraordinary expenses, paid or incurred, in
28 managing the affairs and transacting the business of the bank;
29 (2) Interest paid or then due on debts which it owes;
30 (3) All taxes due;
31 (4) All overdrafts over one thousand dollars (\$1000.00) which have
32 been standing on the books of the bank for a period of 60 days or
33 longer;
34 (5) All losses sustained by the bank. In computing the losses, there
35 shall be included debts owing the bank which have become due
36 and are not in process of collection, and on which interest for one
37 year or more is due and unpaid, unless said debts are well secured;
38 and debts reduced to final judgments which have been unsatisfied
39 for more than one year and on which no interest has been paid for
40 a period of one year, unless said judgments are well secured.
41 (6) All investments carried on its books, which are prohibited under
42 the provisions of this Chapter, or rules and regulations made by
43 the Commissioner of Banks, pursuant to the powers conferred
44 under this Chapter.

1 Sec. 5. Article 7 of Chapter 53 is amended by adding
2 a new section to read:

3 **"§ 53-91.1. Assets to be written off.**

4 Every bank doing business under this Chapter shall be required to write off any
5 asset, or portion thereof, which, following the most recent report of examination
6 issued by the Commissioner of Banks, is classified as uncollectible. Provided,
7 however, such asset need not be written off if the same is secured by collateral
8 acceptable to the Commissioner.

9 Sec. 6. Article 8 of Chapter 53 is amended by adding
10 two new sections to read:

11 **"§ 53-107.1. Administrative orders: penalties for violation.**

12 (a) In addition to any other powers conferred by this Chapter, the Commissioner
13 shall have the power to:

14 (1) Order any bank, trust company, or subsidiary thereof, or any
15 director, officer, or employee to cease and desist violating any
16 provision of this chapter or any lawful regulation issued
17 thereunder; and

18 (2) Order any bank, trust company, or subsidiary thereof, or any
19 director, officer, or employee to cease and desist from a course of
20 conduct that is unsafe or unsound and which is likely to cause
21 insolvency or dissipation of assets or is likely to jeopardize or
22 otherwise seriously prejudice the interests of a depositor.

23 (b) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and
24 opportunity for hearing shall be provided before any of the foregoing actions shall be
25 undertaken by the Commissioner. Provided, however, in cases involving
26 extraordinary circumstances requiring immediate action, the Commissioner may take
27 such action, but shall promptly afford a subsequent hearing upon application to
28 rescind the action taken.

29 (c) The Commissioner shall have the power to subpoena witnesses, compel their
30 attendance, require the production of evidence, administer oaths, and examine any
31 person under oath in connection with any subject related to a duty imposed or a
32 power vested in the Commissioner.

33 (d) The Commissioner may impose a civil money penalty of not more than one
34 thousand dollars (\$1000.00) for each violation by any bank, trust company, or
35 subsidiary thereof, or any director, officer, or employee of an order issued pursuant to
36 subsection (a)(1) of this section. Provided further, the Commissioner may impose a
37 civil money penalty of not more than five hundred dollars (\$500.00) per day for each
38 day that a bank, trust company, or subsidiary thereof, or any director, officer, or
39 employee violates a cease and desist order issued pursuant to subsection (a)(2) of this
40 section.

41 **§ 53-107.2. Review by the Banking Commission; additional penalties.**

42 (a) Administrative orders issued by the Commissioner of Banks and civil money
43 penalties imposed for violation of such orders shall be subject to review by the

1 Banking Commission which shall have power to amend, modify, or disapprove the
2 same at any regular or special meeting.

3 (b) Notwithstanding any penalty imposed by the Commissioner of Banks, the
4 Banking Commission may after notice of and opportunity for hearing, impose, enter
5 judgment for, and enforce by appropriate process, a penalty of not more than ten
6 thousand dollars (\$10,000.00) against any bank, trust company, or subsidiary thereof,
7 or against any of its directors, officers, or employees for violating any lawful orders of
8 the Commission or Commissioner of Banks.

9 Sec. 7. G.S. 53-110 reads as rewritten:

10 **"§ 53-110. Banking Commission to prescribe books, records, etc.; retention,**
11 **reproduction and disposition of records.**

12 (a) Whenever in its judgment it may appear to be advisable, the State Banking
13 Commission may issue such rules, instructions, and regulations prescribing the
14 manner of keeping books, accounts, and records of banks as will tend to produce
15 uniformity in the books, accounts, and records of banks of the same class.

16 (b) The following provisions shall be applicable to banks and trust companies
17 operating under Chapter 53 of the General Statutes and amendments thereto, and to
18 national banking associations insofar as this section does not contravene paramount
19 federal law:

20 (1) Each bank shall retain permanently the minute books of meetings
21 of its stockholders and directors, its capital stock ledger and capital
22 stock certificate ledger or stubs, and all records which the Banking
23 Commission shall in accordance with the terms of this section
24 require to be retained permanently.

25 (2) All other bank records shall be retained for such periods as the
26 Banking Commission shall in accordance with the terms of this
27 section prescribe.

28 (3) The Banking Commission shall from time to time issue regulations
29 classifying all records kept by banks and prescribing the period for
30 which records of each class shall be retained. Such periods may be
31 permanent or for a lesser term of years. Such regulations may from
32 time to time be amended or repealed, but any amendment or
33 repeal shall not affect any action taken prior to such amendment
34 or repeal. Prior to issuing any such regulations the Commission
35 shall consider:

- 36 a. Actions at law and administrative proceedings in which the
37 production of bank records might be necessary or desirable;
- 38 b. State and federal statutes of limitation applicable to such
39 actions or proceedings;
- 40 c. The availability of information contained in bank records
41 from other sources; and
- 42 d. Such other matters as the Banking Commission shall deem
43 pertinent in order that its regulation will require banks to
44 retain their records for as short a period as is commensurate

1 with the interest of bank customers and stockholders and of
2 the people of this State in having bank records available.

3 (4) Any bank may cause any or all records kept by it to be recorded,
4 copied or reproduced by any photographic, photostatic or
5 miniature photographic or reproduction process of any kind which
6 is capable of conversion into written form within a reasonable time
7 process and which correctly, accurately, and permanently copies,
8 reproduces or forms a medium for copying or reproducing the
9 original record on a film or other durable material.

10 (5) Any such photographic, photostatic or miniature photographic
11 copy or reproduction of any kind, including electronic or computer
12 generated data, which is capable of conversion into written form
13 within a reasonable time, shall be deemed to be an original record
14 for all purposes and shall be treated as an original record in all
15 courts and administrative agencies for the purpose of its
16 admissibility in evidence. A facsimile, exemplification or certified
17 copy of any such photographic copy or reproduction shall, for all
18 purposes, be deemed a facsimile, exemplification or certified copy
19 of the original record.

20 (6) Any bank may dispose of any record which has been retained for
21 the period prescribed by the Banking Commission or in
22 accordance with the terms of this section for retention of records
23 for its class."

24 Sec. 8. This act becomes effective October 1, 1991.

Explanation of Legislative Proposal 3

Legislative Proposal 3 makes several technical amendments to the banking laws. The bill provides that when an agent is appointed under federal law to oversee liquidation of a bank the Commissioner of Banks shall be relieved of further liability.

The bill also authorizes banks to purchase stock in the Federal Home Loan Bank and repeals obsolete language

Overdrafts over \$1000 which have been on the books for 60 days or more would be required to be charged off against a bank's profits and uncollectible assets would have to be written off.

Procedures for administrative cease and desist orders to be issued by the Commissioner of Banks are set out, along with penalties for violation of such orders.

The bill also authorizes record keeping by any means capable of conversion into written form within a reasonable time.

The act becomes effective October 1, 1991.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S O R H D

Proposal 4 (DR91-RO-012)

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Savings and Loan Technical Changes (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL CHANGES TO THE SAVINGS
INSTITUTIONS LAW

The General Assembly of North Carolina enacts:

Section 1. G.S. 54B-10 reads as rewritten:

"§ 54B-10. Certificate of incorporation.

(a) The certificate of incorporation of a proposed mutual savings and loan association shall set forth:

- (1) The name of the association, which must not so closely resemble the name of an existing association doing business under the laws of this State as to be likely to mislead the public;
- (2) The county and city or town where its principal office is to be located in this State; and the name of its registered agent and the address of its registered office, including county and city or town, and street and number;
- (3) The period of duration, which may be perpetual. When the certificate of incorporation fails to state the period of duration, it shall be considered perpetual;
- (4) The purposes for which the association is organized, which shall be limited to purposes permitted under the laws of this State for savings and loan associations;

- 1 (5) The amount of the entrance fee per withdrawable account based
2 upon the amount pledged;
- 3 (6) The minimum amount on deposit in withdrawable accounts before
4 it shall commence business;
- 5 (7) Any provision not inconsistent with this Chapter and the proper
6 operation of a savings and loan association, which the
7 incorporators shall set forth in the certificate of incorporation for
8 the regulation of the internal affairs of the association;
- 9 (8) The number of directors, which shall not be less than seven,
10 constituting the initial board of directors (which may be classified
11 in ~~accordance with the provisions of G.S. 55-8-06~~ the certificate of
12 incorporation) and the name and addresses of each person who is
13 to serve as a director until the first meeting of members, or until
14 his successor be elected and qualified;
- 15 (9) The names and addresses of the incorporators.
- 16 (b) The certificate of incorporation of a proposed stock savings and loan
17 association shall set forth:
 - 18 (1) The name of the association, which must not so closely resemble
19 the name of an existing association doing business under the laws
20 of this State as to be likely to mislead the public;
 - 21 (2) The county and city or town where its principal office is to be
22 located in this State; and the name of its registered agent and the
23 address of its registered office, including county and city or town,
24 and street and number;
 - 25 (3) The period of duration, which may be perpetual. When the
26 certificate of incorporation fails to state the period of duration, it
27 shall be considered perpetual;
 - 28 (4) The purposes for which the association is organized, which shall be
29 limited to purposes permitted under the laws of this State for
30 savings and loan associations;
 - 31 (5) With respect to the shares of stock which the association shall have
32 authority to issue:
 - 33 a. If the stock is to have a par value, the number of such shares
34 of stock and the par value of each;
 - 35 b. If the stock is to be without par value, the number of such
36 shares of stock;
 - 37 c. If the stock is to be of both kinds mentioned in paragraphs a
38 and b of subdivision (5) of this subsection, particulars in
39 accordance with those paragraphs;
 - 40 d. If the stock is to be divided into classes, or into series within
41 a class of preferred or special shares of stock, the certificate
42 of incorporation shall also set forth a designation of each
43 class, with a designation of each series within a class, and a

- 1 statement of the preferences, limitations, and relative rights
2 of the stock of each class or series;
- 3 (6) The minimum amount of consideration to be received for its shares
4 of stock before it shall commence business;
- 5 (7) A statement as to whether stockholders have preemptive rights to
6 acquire additional or treasury shares of the association and any
7 provision limiting or denying said rights;
- 8 (8) Any provision not inconsistent with this Chapter or the proper
9 operation of a savings and loan association, which the
10 incorporators shall set forth in the certificate of incorporation for
11 the regulation of the internal affairs of the association;
- 12 (9) The number of directors, which shall not be less than seven,
13 constituting the initial board of directors (which may be classified
14 in accordance with the provisions of G.S. 55-8-06 the certificate of
15 incorporation) and the name and address of each person who is to
16 serve as a director until the first meeting of the stockholders, or
17 until his successor be elected and qualified;
- 18 (10) The names and addresses of the incorporators.

19 (c) The certificate of incorporation, whether for a mutual association or stock
20 association, shall be signed by the original incorporators, or a majority of them, but
21 not less than 10, and shall be acknowledged before an officer duly authorized under
22 the law of this State to take proof or acknowledgement of deeds, and shall be filed
23 along with two conformed copies in the office of the Administrator as provided in
24 G.S. 54B-9.

25 Sec. 2. G.S. 54B-40 reads as rewritten:

26 **"§ 54B-40. Voluntary dissolution by directors.**

27 A State association may be voluntarily dissolved by a majority vote of the board of
28 directors when substantially all of the assets have been sold for the purpose of
29 terminating the business of the association or as provided in G.S. 55-14-01, and when
30 a certificate of dissolution is recorded in the manner required by this Chapter for the
31 recording of certificates of incorporation.

32 Sec. 3. G.S. 54B-62 reads as rewritten:

33 **"§ 54B-62. Relationship of savings and loan associations with the Savings Institutions**
34 **Division.**

35 (a) Except as provided by subsection (b) of this section, a savings and loan
36 association or any director, officer, employee, or representative thereof shall not grant
37 or give to the Administrator or to any employee of the Administrator's office, or to
38 their spouses, any loan or gratuity, directly or indirectly.

39 (b) Neither the Administrator nor any person on the staff of the Savings
40 Institutions Division shall:

- 41 (1) Hold an office or position in any State association or exercise any
42 right to vote on any State association matter by reason of being a
43 member of the association;

1 (2) Be interested, directly or indirectly in any savings and loan
2 association organized under the laws of this State; or

3 (3) Undertake any indebtedness, as a borrower directly or indirectly or
4 endorser, surety or guarantor, or sell or otherwise dispose of any
5 loan or investment to any savings and loan association organized
6 under the laws of this State.

7 (c) Notwithstanding subsection (b) of this section, the Administrator or any other
8 person employed in or by his office may be a withdrawable account holder and
9 receive earnings on such account and may receive a loan secured by the withdrawal
10 account.

11 (d) If the Administrator or other person has any prohibited right or interest in a
12 savings and loan association, either directly or indirectly, at the time of his
13 appointment or employment, he shall dispose of it within 60 days after the date of his
14 appointment, or employment. If the Administrator or other such person is indebted as
15 borrower directly or indirectly, or is an endorser, surety or guarantor on a note, at
16 the time of his appointment or employment, he may continue in such capacity until
17 such loan is paid off.

18 (e) If the Administrator or any employee of the Division has a loan or other note
19 acquired by a State savings bank through the secondary market, he may continue
20 with the debt until such loan or note is paid off.

21 Sec. 4. G.S. 54B-101 reads as rewritten:

22 "§ 54B-101. Directors.

23 (a) The directors of a mutual association shall be elected by the members at an
24 annual meeting, held pursuant to the terms of G.S. 54B-106, for such terms as the
25 bylaws of the association may provide. Director's terms may be classified in the
26 certificate of incorporation. Voting for directors by withdrawable account holders
27 shall be weighted according to the total amount of withdrawable accounts held by
28 such members, subject to any maximum number of votes per member which an
29 association may choose to prescribe in the bylaws of the association. Such
30 requirements shall be fully prescribed in a detailed manner in the bylaws of the
31 association.

32 (b) The directors of a stock association shall be elected by the stockholders at an
33 annual meeting, held pursuant to the terms of G.S. 54B-106, for such terms as the
34 bylaws of the association may provide. ~~Voting for directors shall be weighted~~
35 ~~according to the number of shares of stock held by a stockholder. Such requirements~~
36 ~~shall be fully prescribed in a detailed manner in the bylaws of the association.~~
37 Director's terms may be classified in the certificate of incorporation.

38 (c) Every State association shall have no less than five directors.

39 Sec. 5. G.S. 54B-131 reads as rewritten:

40 "§ 54B-131. Right of setoff on withdrawable accounts.

41 (a) Every association shall have a right of setoff, without further agreement or
42 pledge, upon all withdrawable accounts owned by any member or customer to whom
43 or upon whose behalf the association has made an unsecured advance of money by
44 loan; and upon the default in the repayment or satisfaction thereof the association

1 may, with 30 days notice to the member or customer, cancel on its books all or any
2 part of the withdrawable accounts owned by such member or customer, and apply the
3 value of such accounts in payment on account of such obligation. ~~Any association~~
4 ~~may accept the pledge of withdrawable accounts in such association owned by a~~
5 ~~member or customer, other than the borrower as additional security for any loan~~
6 ~~secured by a withdrawable account or by a withdrawable account and real property,~~
7 ~~or as additional security for any real property loan.~~

8 (b) An association which exercises the right of setoff provided in this section shall
9 first give 30 days notice to the member or customer that such right will be exercised.
10 Such accounts may be held or frozen, with no withdrawals permitted, during the 30-
11 day notice period. Such accounts may not be canceled and the value thereof may not
12 be applied to pay such obligation until the 30-day period has expired without the
13 member or customer having cured the default on the obligation. The amount of any
14 member's or customer's interest in a joint account or other account held in the
15 names of more than one person shall be subject to the right of setoff provided in this
16 section.

17 (c) If an association shall proceed in good faith as provided in this section, but it
18 is later determined that the association was not entitled to have held or setoff funds,
19 then the association's sole obligation shall be to return the funds to the member's or
20 customer's account together with interest at the rate that would have applied if the
21 account had not been held or setoff: the association shall not otherwise be liable for
22 any costs or damages. This section is not exclusive, but shall be in addition to
23 contract, common law and other rights of setoff. Such other rights shall not be
24 governed in any fashion by this section.

25 Sec. 6. G.S. 54B-132(a) reads as rewritten:

26 "**§ 54B-132. Minors as withdrawable account holders; safe deposit box lessees.**

27 (a) An association may issue a withdrawable account to a minor as the sole and
28 absolute owner, or as a joint owner, and receive payments, pay withdrawals, accept
29 pledges and act in any other manner with respect to such account on the order of the
30 minor with like effect as if he were of full age and legal capacity. Any payment to a
31 minor shall be a discharge of the association to the extent thereof. The account shall
32 be held for the exclusive right and benefit of the minor, and any joint owners, free
33 from the control of all persons, except creditors.

34 Sec. 7. This act is effective upon ratification.

1 2. To provide that the statutory right of setoff is not exclusive and does not change
2 any contract or common law right, if any.

3 3. To specifically allow setoff against a person's interest in a joint account.

4 4. To specifically eliminate any consequential damages if the association makes a
5 good faith error.

6

7 Section 6

8 Clarifies that a minor may have an interest in a joint account.

9

10 Section 7

11 Provides that the act is effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S OR H

D

Proposal 5 (DR91-RO-007)

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Credit Union Technical Amendments

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN TECHNICAL AMENDMENTS TO THE
STATUTES RELATING TO CREDIT UNIONS

The General Assembly of North Carolina enacts:

Section 1. Chapter 54 of the General Statutes is amended by adding a
new section to Article 14A to read:

"§ 54-109.7. Conducting business outside this State.

A credit union incorporated under Articles 14A through 14M of this chapter may
conduct business outside of this State in other states or territories where it is
permitted to conduct business as a credit union.

Sec. 2.G.S. 54-109.21 reads as rewritten:

"§54-109.21. General powers.

A credit union may:

- (1) Make contracts;
- (2) Sue and be sued;
- (3) Adopt and use a common seal and alter same;
- (4) Acquire, lease, hold and dispose of property, either in whole or in part,
necessary or incidental to its operations;

- 1 (5) At the discretion of the board of directors, require the payment of an
2 entrance fee or annual membership fee, or both, of any person admitted to
3 membership;
- 4 (6) Receive savings from its members in the form of shares, deposits, or
5 special-purpose thrift accounts;
- 6 (7) Lend its funds to its members as hereinafter provided;
- 7 (8) Borrow from any source in accordance with policy established by the board
8 of directors;
- 9 (9) Discount and sell any eligible obligations, subject to rules and regulations
10 prescribed by the Administrator;
- 11 (10) Sell all or substantially all of its assets or purchase all or substantially all of
12 the assets of another financial institution, subject to the approval of the
13 Administrator of Credit Unions;
- 14 (11) Invest surplus funds as provided in Articles 14A to 14L of this Chapter;
- 15 (12) Make deposits in legally chartered banks, savings banks, savings and loan
16 associations, trust companies and central- type credit union organizations;
- 17 (13) Assess charges to members in accordance with the bylaws for failure to
18 meet properly their obligations to the credit union;
- 19 (14) Hold membership in other credit unions organized under Articles 14A to
20 14L of this Chapter or other acts, and in other associations and
21 organizations composed of credit unions;
- 22 (15) Declare dividends; pay interest on deposits and pay interest refunds to
23 borrowers as provided in Articles 14A to 14L of this Chapter;
- 24 (16) Sell travelers checks and money orders and charge a reasonable fee for
25 such services; ~~provided the instruments are payable at institutions other~~
26 ~~than a credit union ;~~
- 27 (17) Perform such tasks and missions as are requested by the federal government
28 or this State or any agency or political subdivision thereof, when approved
29 by the board of directors and not inconsistent with Articles 14A to 14L of
30 this Chapter;
- 31 (18) Act as fiscal agent for and receive deposits from the federal government,
32 this State, or any agency or political subdivision thereof;
- 33 (19) Contribute to, support, or participate in any nonprofit service facility whose
34 services will benefit the credit union or its membership subject to such
35 regulations as are prescribed by the Administrator;
- 36 (20) Make donations or contributions to any civic, charitable or community
37 organization as authorized by the board of directors, subject to such
38 regulations as are prescribed by the Administrator;
- 39 (21) Act as a custodian of qualified pension funds if permitted by federal law;
- 40 (22) Purchase or make available insurance for its directors, officers, agents,
41 employees, and members; and
- 42 (23) Facilitate its members' purchase of goods and services in a manner which
43 promotes the purposes of the credit union.
- 44 (24) The board of directors may expel from the corporation any member who
45 has not carried out his engagement with the corporation, or has been
46 convicted of a criminal offense, or neglects or refuses to comply with the
47 provisions of this Article or of the bylaws, or who habitually neglects to
48 pay his debts, or shall become insolvent or bankrupt. The members at a
49 regularly called meeting may expel from the corporation any member who
50 has become intemperate or in any way financially irresponsible; no
51 member shall be expelled until he has been informed in writing of the
52 charges against him and an opportunity has been given him, after
53 reasonable notice, to be heard thereon.

1 (25) Engage in activity permitted under this subsection. Notwithstanding any
2 other provision of this Chapter, the Administrator of Credit Unions,
3 subject to the advice and consent of the Credit Union Commission, and
4 upon a finding that action is necessary to preserve and protect the welfare
5 of credit unions and to promote the general economy of the State, may
6 adopt rules allowing State-chartered credit unions to engage in any activity
7 in which they could engage if they were federally chartered credit unions.

8 (26) Subject to rules and regulations prescribed by the Administrator, act as
9 trustee or custodian, and may receive reasonable compensation for so
10 acting, under any written trust instrument or custodial agreement created
11 or organized and forming a part of a deferred compensation plan for its
12 members or groups or organization of its members, provided the funds of
13 such plans are invested in savings or deposits of the credit union. All funds
14 held may be commingled for appropriate purpose of investment, but
15 individual records shall be kept by the credit union for each participant
16 and shall show in proper detail all transactions engaged in under authority
17 of this section.

18 A member may withdraw from a credit union by filing a written notice of his
19 intention to withdraw.

20 The amounts paid in on shares or deposits by an expelled or withdrawing member,
21 with any dividends credited to his shares and any interest accrued on his deposits to
22 the date of expulsion or withdrawal shall be paid to such member, but in the order of
23 expulsion or withdrawal, and only as funds therefor become available, after deducting
24 any amounts due to the corporation by such member. The member shall have no
25 other or further right in the credit union or to any of its benefits, but such expulsion
26 or withdrawal shall not operate to relieve the member from any remaining liability to
27 the corporation. Sec. 3.G.S. 54-109.82 reads as rewritten:

28 "**§ 54-109.82. Investment of funds.**

29 The capital, deposits, undivided profits and reserve fund of the corporation may be
30 invested in any of the following ways, and in such ways only:

- 31 (1) They may be lent to the members of the corporation in accordance with the
32 provisions of this Chapter.
- 33 (2) In capital shares, obligations, or preferred stock issues of any agency or
34 association organized either as a stock company, mutual association, or
35 membership corporation, provided the membership or stockholdings, as
36 the case may be, of such agency or association are confined or restricted to
37 credit unions or organizations of credit unions, or provided the purposes
38 for which such agency or association is organized or designed to service or
39 otherwise assist credit union operations.
- 40 (3) In obligations of the State of North Carolina or any subdivision thereof.
- 41 (4) In obligations of the United States, including bonds and securities upon
42 which payment of principal and interest is fully guaranteed by the United
43 States.
- 44 (5) They may be deposited to the credit of the corporation in savings banks,
45 credit unions, savings and loan associations, State banks or trust companies
46 incorporated under the laws of the State, or in national banks located
47 therein.
- 48 (6) In loans to other credit unions in any amount not to exceed twenty-five
49 percent (25%) of the shares and unimpaired surplus of the lending credit
50 union.
- 51 (7) In an aggregate amount not to exceed twenty-five percent (25%) of the
52 allocations to the reserve fund in any agency or association of the type
53 described in subdivision (2) hereof, provided the purposes of any such

1 agency or association are designed to assist in establishing and maintaining
2 liquidity, solvency, and security in credit union operations.

3 (8) In the North Carolina Savings Guaranty Corporation.

4 (9) In any form of investment allowed by law to the State Treasurer under G.S.
5 147-69.1.

6 (10) Debentures which are issued by an agency of the United States government.

7 (11) In the College Foundation in any amount not to exceed ten percent (10%)
8 of the shares and unimpaired surplus of the investing credit union.

9 (12) They may be ~~placed on time deposits~~ deposited in any ~~banks~~ bank ~~insured~~
10 ~~by the Federal Deposit Insurance Corporation~~ or ~~may be deposited or~~
11 ~~may be invested~~ in any savings or building and loan association insured by
12 the ~~Federal Savings and Loan Insurance Corporation~~ federal government
13 or any agency thereof."

14 Sec. 4. This act becomes effective October 1, 1991.

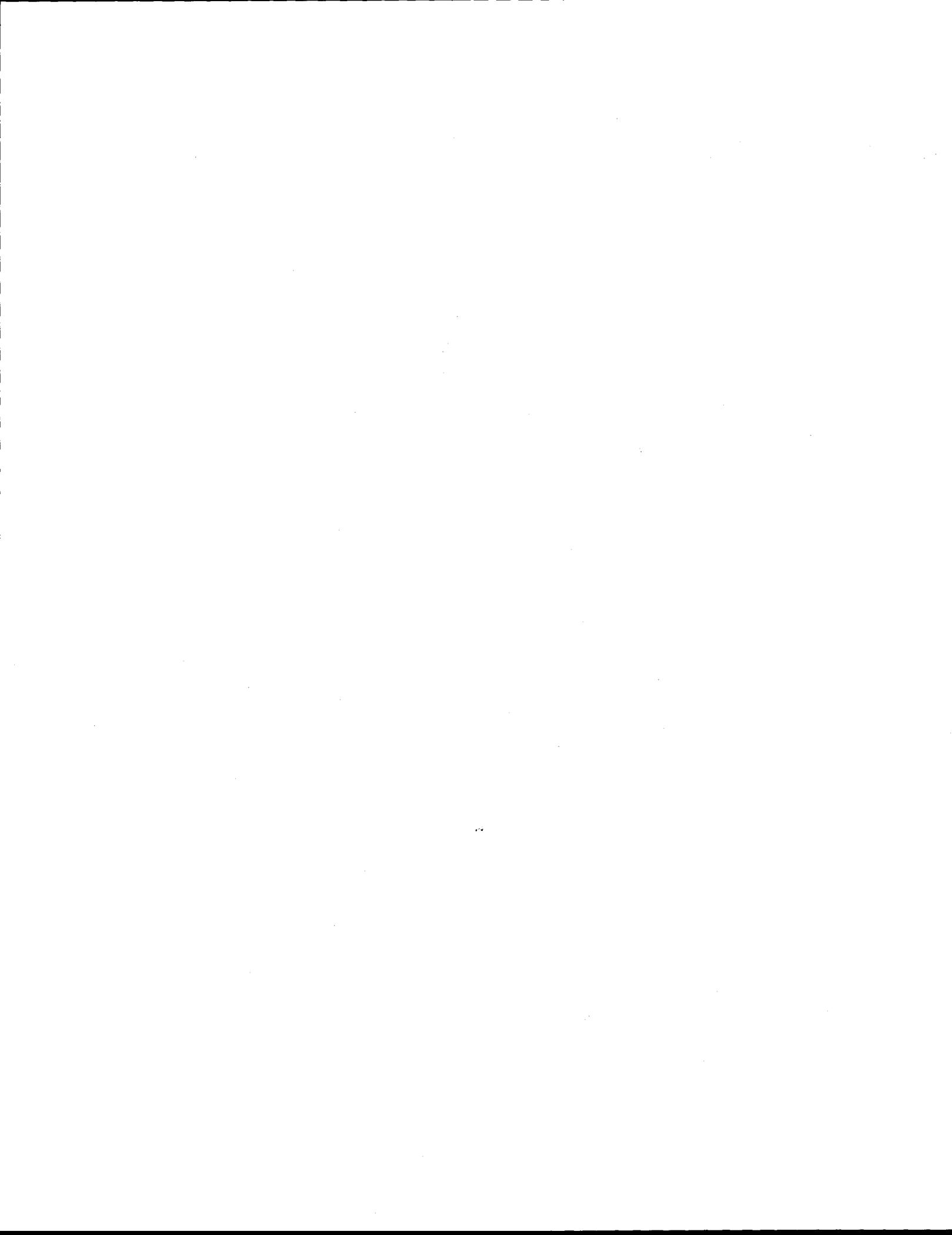
Explanation of Legislative Proposal 5

Legislative Proposal 5 authorizes credit unions incorporated under the laws of this state to conduct business outside of this State in other states or territories where it is permitted.

Credit unions would be authorized to sell checks and money orders even if the instruments are payable at a credit union.

The bill also allows credit union funds to be deposited in any bank association insured by the federal government.

The act is effective October 1, 1991.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

S OR H

D

Proposal 6 (DR91-R0-008)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Foreign Credit Union Act

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED
AN ACT TO REGULATE FOREIGN CREDIT UNIONS

The General Assembly of North Carolina enacts:

Section 1. Chapter 54 of the General Statutes is amended by adding a new Article 14N to read:

"ARTICLE 14N
Foreign Credit Unions

"§ 54-109.106. Foreign Credit Unions.

(a) A credit union organized under the laws of another state or territory of the United States may conduct business as a credit union in this State with the approval of the Administrator, provided credit unions incorporated under Articles 14A through 14M of this Chapter are allowed to do business in the other state under conditions similar to these provisions. Before granting the approval, the Administrator must find that the foreign credit union:

- (1) is a credit union organized under laws similar to Articles 14A through 14M of this Chapter;
- (2) is financially solvent;
- (3) has account insurance through the Federal Government or any agency thereof;
- (4) is examined and supervised by a regulatory agency of the state in which it is organized;

1 (5) will serve a field of membership not being served in this State or to
2 adequately serve its members in this State;

3 (6) operation by the credit union will not have adverse impact on the
4 financial, economic or other interests of residents of this State.

5 **(b) No foreign credit union may conduct business in this State unless it:**

6 (1) makes loans at such terms allowed under the provisions of Article
7 14G of this Chapter;

8 (2) complies with the Rules and Regulations applicable to credit union
9 incorporated under Articles 14A through 14M of this Chapter;

10 (3) agrees to furnish the Administrator a copy of the report of
11 examination of its regulatory agency and such other documents or
12 reports as may be requested or to submit to an examination as the
13 Administrator deems necessary;

14 (4) designates and maintains an agent for the service of process in this
15 State.

16 **(c) The Administrator may deny or revoke approval of a credit union to conduct**
17 **business in this State if the Administrator finds that:**

18 (1) the credit union fails to meet the requirements of Subsection (a);

19 (2) the credit union fails to comply with the laws of this State or
20 lawful rules or orders issued by the Administrator;

21 (3) the credit union has engaged in a pattern of unsafe or unsound
22 credit union practices."

23
24 Sec. 2. This act becomes effective October 1, 1991.

Explanation of Legislative Proposal 6

Legislative Proposal 6 authorizes credit unions organized under the laws of another state or territory of the United States, with the approval of the Administrator, to do business in North Carolina.

The Administrator must find that the foreign credit union:

- Is organized under laws similar to North Carolina's;
- Is solvent;
- Is insured by the federal government;
- Is examined and supervised by a regulatory agency in its home state;
- Will provide certain services in this State; and
- Will not have an adverse impact on residents of this State.

The credit union must obey this State's rules and regulations, furnish the Administrator with copies of its report of examination, and designate an agent for the service of process.

The Administrator may deny or revoke approval if the credit union does not meet the requirements of this act or operates in an unsafe or unsound manner.

The act becomes effective October 1, 1991.



NORTH CAROLINA GENERAL ASSEMBLY

SESSION 1991

DRAFT PROPOSED BILL

H OR S

D

Proposal 7 (DR91-RO-004)

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Foreign Bank Regulation

(PUBLIC)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE FOREIGN BANKS.
3 The General Assembly of North Carolina enacts:
4 Section 1. Chapter 53 of the General Statutes is amended by adding
5 Article 18A and Article 18B to read:
6
7 "Article 18A.
8
9 "§ 53-232.1. Title and scope.
10 (a) This act shall be known and cited as the North Carolina International Banking
11 Corporations and Bank Agencies Act.
12 (b) This Article is intended to set forth the terms and conditions under which an
13 international banking corporation may enter and do business in North Carolina.
14 "§ 53-232.2. Definitions.
15 As used in this Article, the term:
16 (1) 'Commissioner' means the Commissioner of Banks for the State of
17 North Carolina.

1 (2) 'International bank agency' means the international banking
2 corporation with respect to all business or activities conducted in
3 this State or through an office located in this State.

4 (3) 'International banking corporation' means a banking corporation
5 organized and licensed under the laws of some foreign country or
6 a political subdivision thereof, other than the United States of
7 America or any of the states within the United States of America.
8 For purposes of this Article, a foreign country shall include any
9 territories or possessions of the United States.

10 (4) 'Representative office' means a business location of a
11 representative of an international banking corporation established
12 for the purpose of acting in a liaison capacity with existing and
13 potential customers of such international banking corporation and
14 to generate new loans and other activities for such international
15 banking corporation which is operating outside the State.

16 **"§ 53-232.3. Application of this Chapter.**

17 (a) International bank agencies shall be subject to all the provisions of Articles 1
18 through 14 and Articles 17 and 18 of this Chapter, except where it may appear, from
19 the context or otherwise, that such provisions are clearly applicable only to banks or
20 trust companies organized under the laws of this State or the United States. An
21 international bank agency shall have no greater right under or by virtue of this
22 Article and amendments thereto than is granted to banks organized under the laws of
23 this State. Legal and financial terms used herein shall be deemed to
24 refer to equivalent terms used by the country in which the international banking
25 corporation is organized.

26 (b) Nothing contained in this Article shall be construed as granting any authority,
27 directly or indirectly, for any bank or bank holding company, the operations of which
28 are conducted principally outside this State, to operate a branch in this State or to
29 acquire, directly or indirectly, any voting shares of, or interest in, or all or
30 substantially all of the assets of a bank in this State.

31 **"§ 53-232.4. Application of Article 15 of Chapter 2 of Title 14.**

32 Notwithstanding the definition of the term 'foreign corporation' appearing in
33 paragraph (10) of G.S. 55-1-40, all of the provisions of Article 15 of Chapter 55,
34 relating to foreign corporations, where the same are not inconsistent with the
35 provisions of Chapter 53, shall apply to all international bank agencies doing business
36 in this State.

37 **"§ 53-232.5. Requirements for carrying on banking business.**

38 (a) No international banking corporation shall transact a banking business or
39 maintain in this State any office for carrying on such business or any part thereof
40 unless such corporation shall have:

41 (1) Been authorized by its Articles to carry on such business and shall
42 have complied with the laws of the country under which it is
43 chartered;

1 (2) Furnished to the Commissioner such proof as to the nature and
2 character of its business and as to its financial condition as the
3 Commissioner may require;

4 (3) Filed with the Commissioner;

5 a. A duly executed instrument in writing, by its terms of
6 indefinite duration and irrevocable, appointing the
7 Commissioner its true and lawful attorney upon whom all
8 process in any action against it may be served with the same
9 force and effect as if it were a domestic corporation and had
10 been lawfully served with process within the State; and

11 b. A written certificate of designation, which may be changed
12 from time to time thereafter by the filing of a new certificate
13 of designation, specifying the name and address of the
14 officer, agent, or other person to whom such process shall be
15 forwarded by the Commissioner;

16 c. A certified copy of that information required to be supplied
17 to the Secretary of State by those provisions of Article 15 of
18 Chapter 55 which are applicable to foreign corporations.

19 (4) Paid to the Commissioner the fee established by regulation to
20 defray the cost of investigation and supervision; and

21 (5) Received a license duly issued to it by the Commissioner.

22 (b) The Commissioner shall not issue a license to an international banking
23 corporation unless it is chartered in a country which permits banks chartered in the
24 United States of America or any of its states to establish similar facilities therein.

25 "§ 53-232.6. Actions against international banking corporations.

26 (a) An action against an international banking corporation doing business in this
27 State may be maintained by a resident of this State for any cause of action. For
28 purposes of this subsection, the term 'resident of this State' shall include, without
29 limitation, any individual domiciled in this State, or any corporation, partnership, or
30 trust formed under the laws of this State.

31 (b) An action against an international banking corporation doing business in this
32 State may be maintained by another international banking corporation or by a
33 nonresident of this State in the following cases only:

34 (1) Where the action is brought to recover damages for the breach of a
35 contract made or to be performed within this State or relating to
36 property situated within this State at the time of the making of the
37 contract;

38 (2) Where the subject matter of the litigation is situated within this
39 State;

40 (3) Where the cause of action arose within this State, except where the
41 object of the action is to affect the title of real property situated
42 outside this State; or

1 (4) Where the action is based on a liability for acts done within this
2 State by an international banking corporation or its international
3 bank agency.

4 (c) The limitations contained in subsection (b) hereof do not apply to a
5 corporation formed and existing under the laws of the United States of America and
6 which maintains an office in this State.

7 **"§ 53-232.7. Application for license.**

8 (a) Every international banking corporation, before being licensed by the
9 Commissioner to transact a banking business in this State or before maintaining in
10 this State any office to carry on such business or any part thereof, shall subscribe and
11 acknowledge and submit to the Commissioner at his office a separate application, in
12 duplicate, which shall state:

13 (1) The name of such international banking corporation;

14 (2) The location by street and post office address and county where its
15 business is to be transacted in this State and the name of the
16 person who shall be in charge of the business and affairs of such
17 agency;

18 (3) The location where its initial registered office will be located in
19 this State;

20 (4) The amount of its capital actually paid in and the amount
21 subscribed for and unpaid; and

22 (5) The actual value of the assets of such international banking
23 corporation, which must be at least fifty million dollars
24 (\$50,000,000) in excess of its liabilities, and a complete and
25 detailed statement of its financial condition as of a date within 60
26 days prior to the date of such application; except that the
27 Commissioner, in his discretion, may, when necessary or expedient,
28 accept such statement of financial condition as of a date within 120
29 days prior to the date of such application.

30 (b) At the time such application is submitted to the Commissioner, such
31 corporation shall also submit a duly authenticated copy of its Articles of
32 Incorporation or the equivalent corporate document and an authenticated copy of its
33 bylaws, or an equivalent thereof satisfactory to the Commissioner, and pay an
34 investigation and supervision fee to be established by regulation. The international
35 banking corporation shall also submit to the Commissioner a certificate issued by the
36 banking or supervisory authority of the county in which the international banking
37 corporation is organized and licensed stating that the international banking
38 corporation is duly organized and licensed and lawfully existing in good standing, and
39 is empowered to conduct a general banking business.

40 (c) The Commissioner may, in the Commissioner's discretion, approve or
41 disapprove such application, but the Commissioner shall not approve such
42 application unless, in the Commissioner's opinion, the applicant meets each and
43 every requirement of this Article and any other applicable provision of this Chapter
44 and any regulations promulgated thereunder. The Commissioner may specify such

1 conditions as the Commissioner deems appropriate, considering the public interest,
2 the need to maintain a sound and competitive banking system, and the preservation
3 of an environment conducive to the conduct of an international banking business in
4 this State.

5 (d) Nothing in this section or elsewhere in the General Statutes of North Carolina
6 shall be construed to prevent an international banking corporation from operating
7 more than one international bank agency in this State, each at a different place of
8 business, provided each such agency office is separately licensed to transact a banking
9 business or any part thereof pursuant to this Article.

10 "§ 53-232.8. Effect, renewal, and revocation of licenses; permissible activities.

11 (a) When the Commissioner shall have issued a license to any such international
12 banking corporation, it may engage in the business authorized by this Article at, and
13 only at, the office specified in such license for a period not exceeding one year from
14 the date of such license or until such license is surrendered or revoked. No such
15 license shall be transferable or assignable. Every such license shall be, at all times,
16 conspicuously displayed in the place of business specified therein.

17 (b) Such license may be renewed annually by an international banking
18 corporation upon application to the Commissioner upon forms to be supplied by him
19 for that purpose. Such application for renewal must be submitted to the
20 Commissioner no later than sixty (60) days prior to the expiration of such license.
21 Such license may be renewed by the Commissioner upon his determination, with or
22 without examination, that the international banking corporation is in a safe and
23 satisfactory condition, that it has complied with requirements of law with respect to
24 the international bank agency, and that such renewal of the license is proper and has
25 been duly authorized by proper corporate action. Each application for renewal of an
26 international bank agency license shall be accompanied by an annual renewal fee to
27 be determined by the Commissioner by regulation.

28 (c) Such license may be revoked by the Commissioner with or without
29 examination, upon his determination that the international banking corporation does
30 not meet the criteria established by subsection (b) hereof for renewal of licenses.

31 (d) In the event any such license shall be revoked by the Commissioner or the
32 renewal thereof refused by the Commissioner, all the rights and privileges of such
33 international banking corporation to transact the business thus licensed shall
34 forthwith cease, and such license shall be surrendered to the Commissioner within 24
35 hours after written notice of such decision has been mailed by the Commissioner to
36 the registered office of the international banking corporation set forth in its
37 application, as amended, or has been personally delivered to any officer, director,
38 employee, or agent of the international banking corporation who is physically present
39 in this State..

40 (e) An international banking corporation licensed under the terms of this Article
41 to carry on business in this State shall be authorized to conduct a general banking
42 business through its international bank agency in like manner as banks existing under
43 the laws of this State, except that no such international banking corporation shall,
44 through such agency, exercise fiduciary powers or receive deposits but may maintain

1 for the account of others credit balances incidental to or arising out of the exercise of
2 its lawful powers. The Commissioner shall by rule provide appropriate guidance and
3 limitations on permissible powers of international bank agencies consistent with the
4 provisions of this Article.

5 **"§ 53-232.9. Securities, etc., to be held in this State.**

6 (a) Each international banking corporation shall hold, at its office in this State,
7 currency, bonds, notes, debentures, drafts, bills of exchange, or other evidence of
8 indebtedness or other obligations payable in the United States or in United States
9 funds or, with the prior approval of the Commissioner, in funds freely convertible
10 into United States funds in an amount which shall be not less than 108 percent
11 (108%) of the aggregate amount of liabilities of such international banking
12 corporation payable at or through its office in this State or as a result of the
13 operations of the international bank agency, including acceptances but excluding:

14 (1) Accrued expenses; and

15 (2) Amounts due and other liabilities to other offices or branches of
16 and wholly owned (except for a nominal number of directors'
17 shares) subsidiaries of such international banking corporation.

18 (b) For the purpose of this Article, the Commissioner shall value marketable
19 securities at principal amount or market value, whichever is lower; shall have the
20 right to determine the value of any nonmarketable bond, note, debenture, draft, bill
21 of exchange, or other evidence of indebtedness or of any other obligation held by or
22 owed to the international banking corporation in this State; and, in determining the
23 amount of assets for the purpose of computing the above ratio of assets but may give
24 credit, subject to such rules and regulations as the Commissioner may from time to
25 time promulgate, to deposits and credit balances with unaffiliated banking institutions
26 outside this State if such deposits or credit balances are payable in United States
27 funds or in currencies freely convertible into United States funds, provided that credit
28 given for such deposits and credit balances shall not exceed in aggregate amounts
29 such percentage, but not less than eight percent (8%), as the Commissioner may from
30 time to time prescribe of the aggregate amount of liabilities of such international
31 banking corporations, determined as hereinabove provided.

32 (c) If by reason of the existence or the potential occurrence of unusual or
33 extraordinary circumstances the Commissioner deems it necessary or desirable for the
34 maintenance of a sound financial condition, for the protection of creditors and the
35 public interest, and to maintain public confidence in the business of the international
36 bank agency of the international banking corporation, he may reduce the credit to be
37 given as above provided for deposits and credit balances with unaffiliated banking
38 institutions outside this State and may require such rules and regulations as he shall
39 from time to time promulgate, the assets required to be held in this State pursuant to
40 this Article with such bank or trust company existing under the laws of this State as
41 such international banking corporation may designate and the Commissioner may
42 approve.

1 (d) Each international bank agency shall file such reports with the Commissioner
2 as the Commissioner may require in order to determine compliance by the
3 international bank agency with the provisions of this section.

4 "§ 53-232.10. Financial certifications; restrictions on investments, loans, and
5 acceptances.

6 (a) Before opening an office in this State and annually thereafter so long as a
7 bank office is maintained in this State, an international banking corporation, licensed
8 pursuant to this Article, shall certify to the Commissioner the amount of its paid-in
9 capital, its surplus, and its undivided profits, each expressed in the currency of the
10 country of its incorporation. The dollar equivalent of which amount, as determined
11 by the Commissioner, shall be deemed to be the amount of its capital, surplus, and
12 undivided profits.

13 (b) Purchases and discounts of bills of exchange, bonds, debentures, and other
14 obligations and extensions of credit and acceptances by an international bank agency
15 within this State shall be subject to the same limitations as to amount in relation to
16 capital, surplus, and undivided profits as are applicable to banks organized under the
17 laws of this State; provided, however, that, with the prior approval of the
18 Commissioner, the capital notes and capital debentures of such international banking
19 corporation may be treated as capital in computing such limitations.

20 "§ 53-232.11. Reports.

21 (a) Every international banking corporation doing business in this State shall, at
22 such times and in such form as the Commissioner shall prescribe, make written
23 reports in the English language to him under the oath of one of its officers, managers,
24 or agents transacting business in this State, showing the amount of its assets and
25 liabilities and containing such other matters as the Commissioner shall prescribe. If
26 any such international banking corporation shall fail to make any such report, as
27 directed by the Commissioner, or if any such report shall contain any false statement
28 knowingly made, the same shall be grounds for revocation of the license of the
29 international banking corporation.

30 (b) The provisions of G.S. 53-105 shall not apply to international banking
31 corporations or international bank agencies.

32 "§ 53-232.12. Dissolution.

33 (a) When an international banking corporation licensed to maintain an
34 international bank agency in this State is dissolved or its authority or existence is
35 otherwise terminated or canceled in the jurisdiction of its incorporation, a certificate
36 of the official responsible for records of banking corporations of the jurisdiction of
37 incorporation of such international banking corporation attesting to the occurrence of
38 any such event or a certified copy of an order or decree of a court of such
39 jurisdiction directing the dissolution of such international banking corporation or the
40 termination of its existence or the cancellation of its authority shall be delivered to
41 the Commissioner. The filing of the certificate, order, or decree shall have the same
42 effect as the revocation of such international banking corporation's license as
43 provided in G.S. 53-232.8(d).

1 (b) An international banking corporation which proposes to terminate the
2 operation of an international bank agency in this State, or international representative
3 office in this State as defined in G.S. 53-232.13, shall comply with such procedures as
4 the Commissioner may prescribe by rule to insure an orderly cessation of business in
5 a manner which is not harmful to the public interest and shall surrender its license to
6 the Commissioner.

7 (c) The Commissioner shall continue as agent of the international banking
8 corporation upon whom process against it may be served in any action based upon
9 any liability or obligation incurred by the international banking corporation within
10 this State prior to the filing of such certificate, order, or decree; and he shall
11 promptly cause a copy of such process to be mailed by registered or certified mail,
12 return receipt requested, to such international banking corporation at the post office
13 address specified for such purpose on file with his office.

14 (d) An international banking corporation desiring to convert its existing registered
15 international representative office to a licensed international bank agency shall submit
16 to the Commissioner the application required by G.S. 53-232.7, and shall be required
17 to meet the minimum criteria for licensing of an international bank agency pursuant
18 to this Article.

19 (e) An international representative office may act in a liaison capacity with
20 existing and potential customers of such international banking corporations and in
21 undertaking such activities may, through its employees or agents, without limitation,
22 solicit loans, assemble credit information, make proprietary inspections and
23 appraisals, complete loan applications and other preliminary paperwork in
24 preparation for making a loan, but may not solicit or accept deposits. No
25 international representative office shall conduct any banking business or part thereof
26 in this State.

27 **"§ 53-232.13. International representative offices.**

28 (a) An international bank agency which does not transact a banking business or
29 any part thereof in or through an office in this State but maintains an office in this
30 State for other purposes shall be deemed to have an 'international representative
31 office.'

32 (b) Each international representative office located in this State shall register with
33 the Commissioner annually on forms prescribed by him. Such registration shall be
34 filed before January 31 of each year, shall be accompanied by a registration fee
35 prescribed by regulations, and shall list the name of the local representative, the street
36 address of the office, and the nature of the business to be transacted in or through the
37 office.

38 (c) The Commissioner may review the operations of any international
39 representative office annually or at such greater frequency as he deems necessary to
40 assure that the office does not transact a banking business.

41 **"§ 53-232.14. Rules.**

42 Notwithstanding the provision of G.S. 53-95, the Commissioner may promulgate
43 such reasonable rules as may be necessary to effectuate the purposes of this Article.

44 **"§ 53-232.15. Cease and desist.**

1 Upon a finding that any action of an international bank agency subject to this
2 Article may be in violation of any North Carolina banking law, the Commissioner,
3 after a reasonable notice to the international bank agency and an opportunity for it to
4 be heard, shall have the authority to order it to cease and desist from such action. If
5 the international bank agency fails to appeal such decision in accordance with G.S.
6 53-232.16 thereof and continues to engage in such action in violation of the
7 Commissioner's order to cease and desist such action, it shall be subject to a penalty
8 of one thousand dollars (\$1,000), to be recovered with costs by the Commissioner of
9 Banks in any court of competent jurisdiction in a civil action prosecuted by the
10 Commissioner of Banks. The penalty provision of this section shall be in addition to
11 and not in lieu of any other provision of law applicable to an international bank
12 agency's failure to comply with an order of the Commissioner of Banks.

13 **"§ 53-232.16. Appeal of Commissioner's decision.**

14 Notwithstanding any other provision of law, any aggrieved party may, within 30
15 days after final decision of the Commissioner and by written notice to the
16 Commissioner, appeal directly to the North Carolina Court of Appeals for judicial
17 review on the record. In the event of an appeal, the Commissioner shall certify the
18 record to the Clerk of the Court of Appeals within 30 days thereafter. Such record
19 shall include all memoranda, briefs and any other documents, data, information or
20 evidence submitted by any party to such proceeding except for material such as trade
21 secrets normally not available through commercial publication for which such party
22 has made a claim of confidentiality and requested exclusion from the record which
23 the Commissioner deems confidential. All factual information contained in any
24 report of examination or investigation submitted to or obtained by the
25 Commissioner's staff shall also be made a part of the record unless deemed
26 confidential by the Commissioner.

27

28

"Article 18B

29

30 **"§ 53-232.17. Short Title.**

31 This Article shall be known as the 'Domestic International Banking Facility Act.'

32 **"§ 53-232.18. 'Domestic international banking facility' defined.**

33 As used in this Article, the term 'domestic international banking facility' means
34 the location within this State of any banking office, other than an 'international bank
35 agency,' as defined in G.S. 53-232.2 which derives its funds (1) from sources outside
36 of the United States, (2) from another domestic international banking facility, or (3)
37 from temporary advances from its parent organization and employs those funds for
38 banking purposes outside of the United States or through its parent organization, but
39 does not accept deposits subject to check or draft. A domestic international banking
40 facility, when properly established pursuant to this Article, shall not be considered to
41 be a 'parent bank,' 'branch bank,' 'bank office,' or 'bank facility,' as defined in G.S.
42 53-1.

1 "§ 53-232.19. Eligibility to establish and operate domestic international banking
2 facilities; registration with the department; records of business activities; exemption
3 from taxes and license fees.

4 (a) Any bank, whether domiciled within this State or elsewhere and having total
5 capital funds of \$25 million or more, as reported to its chartering authority as of
6 December 31 of each year, may establish and operate a domestic international
7 banking facility in this State upon compliance with the Article. Any bank having
8 total capital funds of \$25 million or less may establish such facility upon compliance
9 with this Article and upon further obtaining the approval of the Commissioner. The
10 Commissioner shall grant such approval only after he has satisfied himself that the
11 registrant is financially sound, is operating in substantial conformity with all
12 applicable laws and regulations, and is, along with its principals, of good character
13 and reputation.

14 (b) Prior to establishing a domestic international banking facility and annually
15 thereafter for so long as the facility shall continue in this State, the bank shall register
16 with the Commissioner on such forms as he shall prescribe and pay a registration fee
17 as determined by regulation. Such registration shall include:

- 18 (1) The name and main office address of the registrant;
- 19 (2) The address at which the facility is to be located;
- 20 (3) The names of the individuals responsible for administering the
21 business affairs of the facility in this State;
- 22 (4) The name and address of the chartering authority for the
23 registrant;
- 24 (5) A resolution from the board of directors or other governing body
25 of the registrant authorizing the establishment of the facility;
- 26 (6) A statement of the registrant that it has the legal capacity under
27 the laws pursuant to which it is organized to establish the facility
28 and that its chartering authority (and regulatory authority if
29 different) interposes no objections to the establishment of such
30 facility; and
- 31 (7) Such other information as the Commissioner may require.

32 Information required in paragraphs (5) and (6) of this subsection need not be
33 resubmitted upon a renewal of a registration. The facility shall promptly notify the
34 Commissioner of any change in the management or location of the facility.

35 (c) The domestic international banking facility shall maintain records of its
36 business activities separate from records of the domestic banking activities of its
37 parent or head office.

38 (d) The domestic international banking facility shall not be subject to any tax or
39 license fee in this State by virtue of its business location in this State or its business
40 activities outside of this State.

41 "§ 53-232.20. Rejection or revocation of registration as a domestic international
42 banking facility.

1 "§ 53-232.19. Eligibility to establish and operate domestic international banking
2 facilities; registration with the department; records of business activities; exemption
3 from taxes and license fees.

4 (a) Any bank, whether domiciled within this State or elsewhere and having total
5 capital funds of \$25 million or more, as reported to its chartering authority as of
6 December 31 of each year, may establish and operate a domestic international
7 banking facility in this State upon compliance with the Article. Any bank having
8 total capital funds of \$25 million or less may establish such facility upon compliance
9 with this Article and upon further obtaining the approval of the Commissioner. The
10 Commissioner shall grant such approval only after he has satisfied himself that the
11 registrant is financially sound, is operating in substantial conformity with all
12 applicable laws and regulations, and is, along with its principals, of good character
13 and reputation.

14 (b) Prior to establishing a domestic international banking facility and annually
15 thereafter for so long as the facility shall continue in this State, the bank shall register
16 with the Commissioner on such forms as he shall prescribe and pay a registration fee
17 as determined by regulation. Such registration shall include:

18 (1) The name and main office address of the registrant;

19 (2) The address at which the facility is to be located;

20 (3) The names of the individuals responsible for administering the
21 business affairs of the facility in this State;

22 (4) The name and address of the chartering authority for the
23 registrant;

24 (5) A resolution from the board of directors or other governing body
25 of the registrant authorizing the establishment of the facility;

26 (6) A statement of the registrant that it has the legal capacity under
27 the laws pursuant to which it is organized to establish the facility
28 and that its chartering authority (and regulatory authority if
29 different) interposes no objections to the establishment of such
30 facility; and

31 (7) Such other information as the Commissioner may require.

32 Information required in paragraphs (5) and (6) of this subsection need not be
33 resubmitted upon a renewal of a registration. The facility shall promptly notify the
34 Commissioner of any change in the management or location of the facility.

35 (c) The domestic international banking facility shall maintain records of its
36 business activities separate from records of the domestic banking activities of its
37 parent or head office.

38 (d) The domestic international banking facility shall not be subject to any tax or
39 license fee in this State by virtue of its business location in this State or its business
40 activities outside of this State.

41 "§ 53-232.20. Rejection or revocation of registration as a domestic international
42 banking facility.

1 (a) The Commissioner may revoke any registration or reject any application to
2 register or renew a registration for a domestic international banking facility upon a
3 finding that:

- 4 (1) The facility no longer qualifies to register under this Article;
5 (2) The scope of the business conducted by the facility exceeds that
6 authorized by this Article;
7 (3) The chartering authority of the parent bank of the facility requests
8 such action in writing; or
9 (4) The Commissioner determines, on his own initiative or otherwise,
10 that representations made by the registrant, including, but not
11 limited to, representations under paragraph (6) of subsection (b) of
12 G.S. 53-232.16 are inaccurate.

13 (b) No facility whose registration has been rejected by the Commissioner may
14 establish an international banking facility in this State.

15 **§ 53-232.21. Examination and supervision by the Commissioner; agreements with**
16 **other bank regulatory authorities.**

17 (a) The Commissioner may examine the operations of any domestic international
18 banking facility for the purpose of determining that the scope of its activities does not
19 exceed that allowed pursuant to this Article and the the facility is otherwise operating
20 in compliance with the applicable laws of this State. The cost of such examination,
21 to be established by rules, shall be borne by the domestic international banking
22 facility. The Commissioner may also by regulation establish minimum requirements
23 for the maintenance of books and records in sufficient form to enable him to carry
24 out responsibilities under this Article.

25 (b) The Commissioner may enter into cooperative and reciprocal agreements with
26 the bank regulatory authority of any government for the periodic examination of
27 banking offices and facilities of any kind, including domestic international banking
28 facilities, located within this State and may accept records from such authorities in
29 lieu of conducting his own examination for compliance with laws of this State.

30 **§ 53-232.22. Rules.**

31 Notwithstanding the provision of G.S. 53-95, the Commissioner may promulgate
32 such reasonable rules as may be necessary to effectuate the purposes of this Article.

33 **§ 53-232.23. Cease and desist.**

34 Upon a finding that any action of a domestic international banking facility subject
35 to this Article may be in violation of any North Carolina banking law, the
36 Commissioner, after a reasonable notice and an opportunity for it to be heard, shall
37 have the authority to order it to cease and desist from such action. If such domestic
38 international banking facility fails to appeal such decision in accordance with G.S. 53-
39 232.24 hereof and continues to engage in such action in violation of the
40 Commissioner's order to cease and desist such action, it shall be subject to a penalty
41 of one thousand dollars (\$1,000), to be recovered with costs by the Commissioner in
42 any court of competent jurisdiction in a civil action prosecuted by the Commissioner.
43 The penalty provision of this section shall be in addition to and not in lieu of any

1 other provision of law applicable to a domestic international banking facility's failure
2 to comply with an order of the Commissioner.

3 **"§ 53-232.24. Appeal of Commissioner's decision.**

4 Notwithstanding any other provision of law, any aggrieved party may, within 30
5 days after final decision of the Commissioner and by written notice to the
6 Commissioner, appeal directly to the North Carolina Court of Appeals for judicial
7 review on the record. In the event of an appeal, the Commissioner shall certify the
8 record to the Clerk of the Court of Appeals within 30 days thereafter. Such record
9 shall include all memoranda, briefs and any other documents, data, information or
10 evidence submitted by any party to such proceeding except for material such as trade
11 secrets normally not available through commercial publication for which such party
12 has made a claim of confidentiality and requested exclusion from information
13 contained in any report of examination or investigation submitted to or obtained by
14 the Commissioner's staff shall also be made a part of the record unless deemed
15 confidential by the Commissioner."

16 Sec. 2. This act shall become effective October 1, 1991.

Explanation of Legislative Proposal 7

Legislative Proposal 7 contains the "North Carolina International Banking Corporations and Bank Agencies Act". The Act sets forth the terms and conditions under which an international banking corporation may enter and do business in North Carolina.

International banking corporations must, in order to do business in this state, have:

- Been authorized by its Articles to carry on such business and have complied with its country's laws;
- Furnished the Commissioner with proof as to the nature and condition of its business and its financial condition;
- Designated an attorney an agent for service of process;
- Paid the required fee; and
- Received a license from the Commissioner.

The bill sets out the requirements for obtaining a license, which may be renewed annually.

The bill also contains the "Domestic International Banking Facility Act" which applies to banking offices located within this state, other than international bank agencies, which receive funds from outside the United States or employ funds for banking purposes outside the United States.

The act becomes effective October 1, 1991.

1 (2) "Licensee" means any person duly licensed by the Commissioner
2 pursuant to this Article;

3 (3) "Check" means any check, draft, money order or other instrument
4 for the transmission or payment of money including any instrument
5 transmitted by wire or any other means;

6 (4) "Commissioner" means the Commissioner of Banks of the State of
7 North Carolina.

8 Sec. 3.G.S. 53-195 reads as rewritten:

9 "§ 53-195. Exemptions.

10 Nothing in this Article shall apply to the sale or issuance of checks by:

11 (1) Corporations organized under the general banking laws of this
12 State or of the United States.

13 (2) The government of the United States or any department or agency
14 thereof.

15 (3) Savings and loan associations and credit unions organized under
16 the laws of this State or of the United States.

17 Sec. 4.G.S. 53-197 reads as rewritten:

18 "§ 53-197. Investigation fee.

19 Each application for a license shall be accompanied by an investigation fee of five
20 hundred dollars (\$500.00). ~~If the license is granted, the investigation fee shall be~~
21 ~~applied to the license fee for the first year.~~ No investigation fee shall be refunded.

22 Sec. 5. Article 16 of Chapter 53 is amended by adding a new section to
23 read:

24 "§ 53-199.1. Required investments; permissible investments.

25 (a) Every licensee under this Act shall at all times when such license is in effect
26 have on hand permissible investments in an amount equal to the aggregate face value
27 of all outstanding checks sold by the licensee in the United States, except travellers
28 checks, for which the licensee is liable for payment. Provided, however, this section
29 shall not apply to any licensee who is found by the Commissioner, upon examination
30 of audited financial statements and other appropriate analysis, to have sufficient
31 liquid assets so as to conduct its business in a safe and sound manner.

32 (b) For the purposes of this section, "permissible investments" means:

33 (1) cash;

34 (2) investment securities that are obligations of the United States, its
35 agencies or instrumentalities, or obligations that are guaranteed
36 fully as to principal and interest by the United States, or any
37 obligations of any state, municipality, or of any political
38 subdivision thereof; or

39 (3) any other investments approved by the Commissioner.

40 (c) The Commissioner may adopt and enforce rules with respect to required
41 permissible investments in order to prevent unsafe and unsound practices. .

42 Sec. 6.G.S. 53-202 reads as rewritten:

43 "§ 53-202. License fees.

1 Each licensee shall pay to the Commissioner within five days after the issuance of the
2 license, and annually thereafter on or before ~~June 30~~ December 31 of each year, a
3 license fee of ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1000.00), plus
4 twenty-five dollars (\$25.00) for each location at which its checks are sold, up to a
5 maximum amount of ten thousand dollars (\$10,000.00). Provided, however, there
6 shall be no per location fee payable for locations exempted under G.S. 53-205.
7 Provided further, for the year ending December 31, 1991, each licensee shall pay a
8 license fee of five hundred dollars (\$500.00), plus twenty-five dollars (\$25.00) for
9 each location at which its checks are sold, up to a maximum amount of ten thousand
10 dollars (\$10,000.00).

11 Sec. 7.G.S. 53-203 reads as rewritten:

12 "**§ 53-203. More than one location authorized; employees, agents and representatives.**

13 Each licensee may conduct business at one or more locations within this State and
14 through or by means of such employees, agents, subagents or representatives as such
15 licensee may from time to time designate and appoint. No license under this Article
16 shall be required of any such employee, agent, subagent or representative who is
17 acting for or on behalf of a licensee hereunder in the sale of checks of which the
18 licensee is the issuer. Provided, however, each location, other than locations
19 exempted under G.S. 53-195, selling checks and money orders must post in public
20 view a certificate which discloses the name of the issuer and cites the authority under
21 which such issuer is operating. Provided further, each licensee must file with the
22 Commissioner a quarterly report of agent activity, the scope of which report shall be
23 set by regulation. Each such agent, subagent or representative shall upon demand
24 transfer and deliver to the licensee the proceeds of the sale of licensee's checks less
25 the fees, if any, due such agent, subagent or representative.

26 Sec. 8.Article 16 of Chapter 53 of the General

27 Statutes is amended by adding a new section to read:

28 "**§ 53-203.1. Checks to bear name of issuer.**

29 Each check, draft, money order or other payment issued or sold by a licensee,
30 either directly or indirectly, or through an agent, shall bear the name, along with the
31 address or telephone number of the issuer clearly imprinted thereon.

32 Sec. 9. G.S. 53-204 reads as rewritten:

33 "**§ 53-204. Annual lists of locations and agents; annual financial statements; audits.**

34 Each licensee shall file with the Commissioner annually on or before ~~June 30~~
35 December 31 of each year a statement listing the locations of the offices of the
36 licensee and the names and locations of the agents or subagents authorized by the
37 licensee to engage in the sale of checks of which the licensee is the issuer and shall
38 also file a statement correctly reflecting its net worth as of the close of its most recent
39 fiscal year, such statement to be certified to by a certified public accountant
40 satisfactory to the Commissioner. Such statement shall be filed no later than April 30
41 for the preceding year. The Commissioner may conduct or cause to be conducted an
42 examination or audit of the books and records of any licensee at any time or times he
43 shall deem proper, the cost of such examination or audit to be borne by the licensee.
44 In lieu of such examination or audit, the Commissioner may accept an audit or

1 examination report compiled by money transmitter regulators of another state. The
2 refusal of access to such books and records shall be cause for the revocation of
3 license.

4 Sec. 10. This act becomes effective October 1, 1991.

5

Explanation of Legislative Proposal 8

Legislative Proposal 8 amends the "Sale of Checks Act" and retitles it as the "Money Transmitters Act".

The bill would require licensees to have permissible investments on hand in an amount equal to the face value of outstanding checks sold.

In addition to an investigation fee of \$500 at the time a license is applied for, the licensee would be required to pay an annual license fee of \$1000 plus \$25 per location, up to a maximum of \$10,000.

The bill would also require quarterly reports, posting of certificates of authority, and that every instrument issued bear the name of the issuer. Financial statements would be required to be filed annually.

The act becomes effective October 1, 1991.



1 registered with the Commissioner, unless such servicer shall be exempt as defined in
2 G.S. 53-234(6).

3 Sec. 2. G.S. 53-234 reads as rewritten:

4 "~~§ 53-234. (Effective until July 1, 1990) Definitions:~~

5 - ~~The following definitions apply in this Article:~~

6 - (1) ~~"Mortgage loan" means a loan to a natural person or persons made~~
7 ~~primarily for personal, family or household use, primarily secured~~
8 ~~by either a mortgage or a deed of trust on residential real property.~~

9 (2) ~~"Residential real property" means real property located in this~~
10 ~~State upon which there is located or there is to be located one or~~
11 ~~more single family dwellings or dwelling units.~~

12 (3) ~~"Mortgage banker" means a person or entity who or which for~~
13 ~~compensation or gain, either directly or indirectly, advances funds,~~
14 ~~offers to advance funds, or makes a commitment to advance funds~~
15 ~~to an applicant for a mortgage loan.~~

16 (4) ~~"Mortgage broker" means a person or entity in the business of~~
17 ~~soliciting, processing, placing or negotiating mortgage loans for~~
18 ~~others or offering to process, place or negotiate mortgage loans for~~
19 ~~others.~~

20 (5) ~~"Soliciting, processing, placing or negotiating a mortgage loan"~~
21 ~~means for compensation or gain, either directly or indirectly,~~
22 ~~accepting or offering to accept an application for a mortgage loan,~~
23 ~~assisting or offering to assist in the processing of an application for~~
24 ~~a mortgage loan, soliciting or offering to solicit a mortgage loan on~~
25 ~~behalf of a third party or negotiating or offering to negotiate the~~
26 ~~terms or conditions of a mortgage loan with a lender on behalf of a~~
27 ~~third party.~~

28 (6) ~~"Exempt person or organization" means:~~

29 (a) ~~Any lender authorized to engage in business as a bank, a~~
30 ~~farm credit system, life insurance company, savings~~
31 ~~institution, or credit union, under the laws of the United~~
32 ~~States or the State of North Carolina and subsidiaries and~~
33 ~~affiliates of such lenders, which subsidiaries and affiliates are~~
34 ~~subject to the general supervision or regulation of the lender~~
35 ~~or subject to audit or examination by a regulatory body or~~
36 ~~agency of the United States or the State of North Carolina;~~
37 ~~the entities listed in this sub-subdivision, and their officers~~
38 ~~and employees, are not subject to any of the provisions of~~
39 ~~this Article; or~~

40 (b) ~~Any licensed real estate agent or broker, who is performing~~
41 ~~those activities subject to the regulation of the North~~
42 ~~Carolina Real Estate Commission. Notwithstanding the~~
43 ~~above, an exempt person does not include a real estate agent~~

- 1 ~~or broker who receives direct compensation or income in~~
 2 ~~connection with the placement of a mortgage loan; or~~
 3 (e) ~~Any person who, as seller, receives in one calendar year no~~
 4 ~~more than ten mortgages, deeds of trust, or other security~~
 5 ~~instruments on real estate as security for a purchase money~~
 6 ~~obligation; or~~
 7 (d) ~~The North Carolina Housing Finance Agency as established~~
 8 ~~by Chapter 122A of the General Statutes and the North~~
 9 ~~Carolina Agricultural Finance Authority as established by~~
 10 ~~Chapter 122D of the General Statutes; or~~
 11 (e) ~~Any agency of the federal government or any state or~~
 12 ~~municipal government granting first mortgage loans under~~
 13 ~~specific authority of the laws of any state or the United~~
 14 ~~States.~~
 15 - (7) ~~"Registrant" means any person or entity who or which is registered~~
 16 ~~pursuant to G.S. 53-236:~~
 17 (a) ~~Which engages in the business of making mortgage loans in~~
 18 ~~this State; or~~
 19 (b) ~~Which engages in the business of soliciting, processing,~~
 20 ~~placing or negotiating mortgage loans for others, or offering~~
 21 ~~to process, place or negotiate mortgage loans for others.~~
 22 (8) ~~"Commissioner" means the Commissioner of Banks of this State.~~

23 § 53-234. (V2) (Effective July 1, 1990) Definitions.

24 The following definitions apply in this Article:

- 25 (1) "Mortgage loan" means a loan to a natural person or persons made
 26 primarily for personal, family or household use, primarily secured
 27 by either a mortgage or a deed of trust on residential real property.
 28 (2) "Residential real property" means real property located in this
 29 State upon which there is located or there is to be located one or
 30 more single family dwellings or dwelling units.
 31 (3) "Mortgage banker" means a person or entity who or which for
 32 compensation or gain, either directly or indirectly, advances funds,
 33 offers to advance funds, or makes a commitment to advance funds
 34 to an applicant for a mortgage loan.
 35 (4) "Mortgage broker" means a person or entity in the business of
 36 soliciting, processing, placing or negotiating mortgage loans for
 37 others or offering to process, place or negotiate mortgage loans for
 38 others.
 39 (4a) "Mortgage servicer" means any person who or which for
 40 compensation or gain, directly or as an agent for another, engages
 41 in servicing mortgage loans.
 42 (4b) "Servicing" means collecting for any lender, note owner, note
 43 holder, or for a registrant's own account, payments of principal
 44 and/or interest, payment of trust items including, but not limited to,

1 hazard insurance and taxes on a residential mortgage loan in
2 accordance with the terms of any mortgage, deed of trust or other
3 such loan agreement. Servicing shall also include loan payment
4 follow-up, delinquency loan follow-up, loan analysis, and any
5 notifications to the borrower which are necessary to enable the
6 borrower to keep the loan current and in good standing.

7 (5) "Soliciting, processing, placing or negotiating a mortgage loan"
8 means for compensation or gain, either directly or indirectly,
9 accepting or offering to accept an application for a mortgage loan,
10 assisting or offering to assist in the processing of an application for
11 a mortgage loan, soliciting or offering to solicit a mortgage loan on
12 behalf of a third party or negotiating or offering to negotiate the
13 terms or conditions of a mortgage loan with a lender on behalf of a
14 third party.

15 (6) "Exempt person or organization" means:

16 (a) Any lender authorized to engage in business as a bank, a
17 farm credit system, life insurance company, savings
18 institution, or credit union, under the laws of the United
19 States or ~~the State of North Carolina~~ any state and
20 subsidiaries and affiliates of such lenders, which subsidiaries
21 and affiliates are subject to the general supervision or
22 regulation of the lender or subject to audit or examination
23 by ~~a regulatory body or agency of the United States or the~~
24 ~~State of North Carolina;~~ the Federal Deposit Insurance
25 Corporation, the Federal Reserve Board, the Office of the
26 Comptroller of the Currency, the Office of Thrift
27 Supervision, National Credit Union Administration, or any
28 successor to any of those financial institution regulatory
29 agencies, or a financial institution regulatory agency created
30 under state law; the entities listed in this sub-subdivision,
31 and their officers and employees, are not subject to any of
32 the provisions of this Article; or

33 (b) Any licensed real estate agent or broker, who is performing
34 those activities subject to the regulation of the North
35 Carolina Real Estate Commission. Notwithstanding the
36 above, an exempt person does not include a real estate agent
37 or broker who receives direct compensation or income in
38 connection with the placement of a mortgage loan; or

39 (c) Any person who, as seller, receives in one calendar year no
40 more than ten mortgages, deeds of trust, or other security
41 instruments on real estate as security for a purchase money
42 obligation; or

43 (c1) Any person making two or less mortgage loans in any period
44 of twelve consecutive months; or

1 (d) The North Carolina Housing Finance Agency as established
2 by Chapter 122A of the General Statutes; or

3 (e) Any agency of the federal government or any state or
4 municipal government granting first mortgage loans under
5 specific authority of the laws of any state or the United
6 States; ~~or~~

7 (f) Bona fide officers and employees of registrants.

8 (7) "Registrant" means any person or entity who or which is registered
9 pursuant to G.S. 53-236:

10 (a) Which engages in the business of making mortgage loans in
11 this State; ~~or~~

12 (b) Which engages in the business of soliciting, processing,
13 placing or negotiating mortgage loans for others, or offering
14 to process, place or negotiate mortgage loans for others; ~~or~~

15 (c) Which services mortgage loans in this state.

16 (8) "Commissioner" means the Commissioner of Banks of this State.

17 Sec. 3.G.S. 53-235 reads as rewritten:

18 "**§ 53-235. Registration requirements of mortgage bankers and mortgage brokers.**

19 (a) No mortgage banker, as defined in G.S. 53-234(3), shall engage in the business
20 of making mortgage loans without first being registered with the Commissioner in
21 accordance with the registration procedure provided in this Article and such
22 regulations as may be promulgated by the Commissioner.

23 (b) No mortgage broker, as defined in G.S. 53-234(4), shall engage in the business
24 of processing, placing or negotiating a mortgage loan or offering to process, place or
25 negotiate a mortgage loan in this State without first being registered with the
26 Commissioner in accordance with the registration procedure provided in this Article
27 and such regulations as may be promulgated by the Commissioner.

28 (c) No mortgage loan servicer, as defined in G.S. 53-243(4a), shall engage in
29 servicing any mortgage loan without first being registered with the Commissioner in
30 accordance with the registration procedure provided by this Article and such other
31 regulations as may be promulgated by the Commissioner.

32 (e) ~~(d)~~ Notwithstanding subsections (a) and (b), and (c) of this section, the
33 registration provisions of this Article shall not apply to any exempt persons or entities
34 as defined by G.S. 53-234(6). exempt persons or entities as defined by G.S. 53-234(6)
35 are not required to register with the Commissioner, so long as they shall have
36 received written confirmation of exemption from registration.

37 (e) ~~(d)~~ Notwithstanding any other provision of law, an affiliate operating in the
38 same office or subsidiary operating in the same office of a licensee under the North
39 Carolina Consumer Finance Act shall register with the Commissioner in accordance
40 with the registration procedures provided in this Article: Provided, however, such
41 affiliate or subsidiary shall be exempt from the payment of any required fees under
42 this Article.

43 Sec. 4.G.S. 53-236 reads as rewritten:

44 "**§ 53-236. Registration procedures.**

1 (a) An application to become registered as a mortgage banker ~~or~~, a mortgage
2 broker, or a mortgage loan servicer shall be in writing, under oath, and in such form
3 as shall be prescribed by the Commissioner. Such application shall contain the name
4 and complete business and residential address or addresses of the applicant, or if the
5 applicant is a partnership, association, corporation or other form of business
6 organization, the names and complete business and residential addresses of each
7 member, director and principal officer thereof.

8 (b) The application shall also include an affirmation of financial solvency noting
9 such capitalization requirements as ~~may be required by~~ the Commissioner may
10 prescribe by regulation, and such descriptions of the business activities, financial
11 responsibility, educational background and general character and fitness of the
12 applicant as may be required by the Commissioner. The Commissioner may accept a
13 verifiable line of credit in lieu of a minimum capital requirement. Such application
14 shall be accompanied by a fee, payable to the Commissioner, of five hundred dollars
15 (\$500.00).

16 Sec. 5. G.S. 53-237 reads as rewritten:

17 "**§ 53-237. Registration by the Commissioner.**

18 (a) Upon the filing of an application for registration, if the Commissioner finds
19 that the financial responsibility, experience, character, and general fitness of the
20 applicant, and of the members thereof if the applicant is a partnership or association,
21 and of the officers and directors thereof if the applicant is a corporation, are such as
22 to command the confidence of the community and to warrant belief that the business
23 will be operated honestly and fairly, within the purposes of this Article, he shall
24 thereupon register the applicant as a mortgage banker, ~~or~~ a mortgage broker, or a
25 mortgage servicer, whichever is applicable, on a roll maintained for that purpose at
26 the Commission of Banks, and shall issue a certificate attesting to such registration. If
27 the Commissioner does not so find, he shall not register such applicant, and shall
28 notify the applicant of the denial. The Commissioner shall transmit the certificate to
29 the applicant.

30 (b) Upon the receipt of such certificate, a ~~mortgage banker or a mortgage broker,~~
31 registrant shall be authorized to engage in the business for which the registration
32 certificate was issued.

33 (c) Each certificate issued to a registrant shall state the address or addresses at
34 which the business is to be conducted and shall state fully the name of the registrant,
35 and the date of the registration. A copy of such certificate shall be prominently
36 posted in each place of business of the registrant. Such certificate shall not be
37 transferable or assignable.

38 Sec. 6.G.S. 53-238 reads as rewritten:

39 "**§ 53-238. Prohibited activities of mortgage bankers and mortgage brokers, and**
40 **mortgage servicers.**

41 Mortgage bankers ~~and~~, mortgage brokers, and mortgage servicers are prohibited
42 from the following activities:

43 (1) Misrepresenting the material facts or making false promises likely
44 to influence, persuade, or induce an applicant for a mortgage loan

- 1 or a mortgagor to take a mortgage loan, or pursuing a course of
2 misrepresentation through agents or otherwise;
- 3 (2) Misrepresenting or concealing of material factors, terms or
4 conditions of a transaction to which he is a party, pertinent to an
5 applicant for a mortgage loan or a mortgagor;
- 6 (3) Failing to disburse funds in accordance with a written commitment
7 or agreement to make a mortgage loan;
- 8 (4) Improperly refusing to issue a satisfaction of a mortgage;
- 9 (5) Failing to account for or deliver to any person any personal
10 property obtained in connection with a mortgage loan such as
11 money, funds, deposit, check, draft, mortgage, or other document,
12 or thing of value, which has come into his hands and which is not
13 his property, or which he is not in law or equity entitled to retain;
- 14 (6) Engaging in any transaction, practice, or course of business which
15 is not in good faith or fair dealing, or which operates a fraud upon
16 any person, in connection with the making of or purchase or sale
17 of any mortgage loan.

18 Sec. 7. Article 19 of Chapter 53 is amended by adding
19 a new section to read:

20 "**§ 52-238.1 Limitation on mortgage broker fees.**

21 No mortgage banker, mortgage broker, or mortgage servicer required to be
22 registered under this Article shall:

- 23 (1) Receive compensation from a borrower until a written
24 commitment to make a mortgage loan is given to the borrower by
25 a mortgage lender, except documented costs for credit reports and
26 appraisals;
- 27 (2) Receive compensation from a mortgage lender of which he is a
28 principal stockholder, partner, trustee, director, officer, or
29 employee;
- 30 (3) Receive compensation from a borrower in connection with any
31 mortgage loan transaction in which he is the lender or principal
32 stockholder, partner, trustee, director, or officer of the lender;
- 33 (4) Receive compensation from the borrower other than that specified
34 in a written agreement signed by the borrower; or
- 35 (5) Receive compensation for negotiating, placing, or finding a
36 mortgage loan where such mortgage banker, mortgage broker, or
37 mortgage servicer or any person affiliated with such mortgage
38 banker, mortgage broker, or mortgage servicer has otherwise acted
39 as a real estate broker, agent or salesman in connection with the
40 sale of the real estate which secures the mortgage loan and such
41 mortgage banker, mortgage broker, or mortgage servicer or
42 affiliated person has received or will receive any other
43 compensation or thing of value from the lender, borrower, seller,
44 or any other person.

1 As used in this subparagraph, the term "affiliated person of a mortgage banker,
2 mortgage broker, or mortgage servicer" means any person who is a subsidiary,
3 stockholder, partner, trustee, director, officer, or employee of a mortgage banker,
4 broker, or servicer, and any corporation 10% or more of the capital stock of which is
5 owned by a mortgage banker, broker, or servicer or by any person who is a
6 subsidiary, stockholder, partner, trustee, director, officer, or employee of a mortgage
7 banker, mortgage broker, or mortgage servicer.

8 Sec. 8. Article 19 of Chapter 53 is amended by adding
9 a new section to read:

10 "**§ 53-238.2 Transfer of servicing; notices.**

11 Whenever the servicing of a residential mortgage is transferred or sold by a
12 mortgage banker, mortgage broker, or mortgage servicer, notice shall be given to the
13 mortgagor in accordance with the Mortgage Servicing Transfer Disclosure Provisions
14 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.2601 et seq.) as
15 amended.

16 Sec. 9. Article 19 of Chapter 53 is amended by adding
17 a new section to read:

18 "**§ 53-239.2 Escrow funds.**

19 Mortgage bankers, mortgage brokers, or mortgage servicers under this Article shall
20 comply with the Mortgage Escrow Accounts provision of the Real Estate Settlement
21 Procedures Act of 1974 (12 U.S.C. 2609) as amended.

22 Sec. 10. G.S. 53-239 reads as rewritten:

23 "**§ 53-239. Cease and desist; revocation of registration certificate.**

24 (a) Upon the finding that any action of a mortgage banker or , a mortgage broker,
25 or a mortgage servicer may be in violation of this Article, or of any law or regulation
26 of this State or of the federal government or any agency thereof, the Commissioner,
27 after reasonable notice to the mortgage banker or , mortgage broker, or mortgage
28 servicer, and an opportunity for the mortgage banker or , mortgage broker, or
29 mortgage servicer to be heard, shall order it to cease and desist from such action.

30 (b) If the mortgage banker or mortgage broker fails to appeal such cease and
31 desist order of the Commissioner in accordance with G.S. 53-240 hereof and
32 continues to engage in such action in violation of the Commissioner's order to cease
33 and desist such action, it shall be subject to a penalty of one thousand dollars
34 (\$1,000) for each such action it takes in violation of the Commissioner's order. The
35 penalty provision of this section shall be in addition to and not in lieu of any other
36 provision of law applicable to a mortgage banker or , a mortgage broker, or a
37 mortgage servicer for the mortgage banker or , mortgage broker's broker, or
38 mortgage servicer's failure to comply with an order of the Commissioner.

39 (c) The Commissioner may, upon the finding that a mortgage banker or , a
40 mortgage broker, or a mortgage servicer has engaged in a course of conduct which is
41 in violation of this Article, revoke the registration of such mortgage banker, or
42 mortgage broker, or mortgage servicer temporarily or permanently in the discretion
43 of the Commissioner.

1 (d) Nothing in this Article shall limit any statutory or common law right of any
2 person to bring any action in any court for any act, or the right of the State to punish
3 any person for any violation of any law.

4 Sec. 11. G.S. 66-106 reads as rewritten:

5 **"§ 66-106. Definitions.**

6 For purposes of this Article the following definitions apply:

7 (1) A "loan broker" is any person, firm, or corporation who, in return
8 for any consideration from any person, promises to (i) procure for
9 such person, or assist such person in procuring, a loan from any
10 third party; or (ii) consider whether or not it will make a loan to
11 such person.

12 (2) A "loan" is an agreement to advance money or property in return
13 for the promise to make payments therefor, whether such
14 agreement is styled as a loan, a lease or otherwise.

15 Provided, that this Article shall not apply to any person, firm, corporation, or other
16 entity engaged exclusively in brokering residential mortgage loans and registered with
17 and subject to the jurisdiction of the Commissioner of Banks under the provisions of
18 Article 19 of Chapter 53 of the North Carolina General Statutes, any party approved
19 as a mortgagee by the Secretary of Housing and Urban Development, the Federal
20 Housing Administration, the Veterans Administration, a National Mortgage
21 Association or any federal agency; nor to any party currently designated and
22 compensated by a North Carolina licensed insurance company as its agent to service
23 loans it makes in this State; nor to any insurance company registered with and
24 licensed by the North Carolina Insurance Commissioner; nor to any attorney-at-law,
25 public accountant, or dealer registered under the North Carolina Securities Act,
26 acting in the professional capacity for which such attorney-at-law, public accountant,
27 or dealer is registered or licensed under the laws of the State of North Carolina.
28 Provided further that subdivision (1)(ii) above shall not apply to any lender whose
29 loans or advances to any person, firm or corporation in North Carolina aggregate
30 more than one million dollars (\$1,000,000) in the preceding calendar year."

31 Sec.12. This act shall become effective October 1, 1991.

Explanation of Legislative Proposal 9

Legislative Proposal 9 expands the act requiring registration of mortgage bankers and brokers to cover mortgage servicers and renames it the "Residential Mortgage Loan Registration Act".

The act exempts from registration any person making two or less mortgage loans in any period of twelve consecutive months.

The bill also spells out the limitations on fees which may be charged by persons required to be registered under this act and makes certain transactions subject to the provisions of the Real Estate Settlement Procedures Act of 1974.

The act becomes effective October 1, 1991.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S OR H D

Proposal 10 (DR91-RO-011)

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Assumption Fee Changes(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW REGARDING ASSUMPTION FEES IN
3 CONNECTION WITH CERTAIN REAL ESTATE LOANS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 24-10(d) reads as rewritten:
6 "(d) Assumption Fee.
7 (1) Any lender may charge to any person, ~~persons,~~ firm or corporation
8 that assumes a loan, ~~made under the provisions of G.S. 24-1.1 and~~
9 ~~secured by real property, a fee not to exceed one hundred~~
10 ~~seventy five dollars (\$175.00); provided, however, that if the~~
11 ~~original obligor is not released from liability on the obligation, the~~
12 ~~fee shall not exceed one hundred dollars (\$100.00). The fees~~
13 ~~authorized by this subsection may be paid in whole or in part by~~
14 ~~any party but the total shall not exceed the maximum fees set forth~~
15 ~~herein: loan secured by a first mortgage or first deed of trust on~~
16 ~~real estate upon which there is located, or there is to be located,~~
17 ~~one to four residential dwellings or dwelling units the following~~
18 ~~fee:~~

- 1 a. Where the mortgage or deed of trust contains a due-on-sale
2 clause, one of the following fees, as applicable: (i) that
3 permitted by the Secretary of Housing and Urban
4 Development for Federal Housing Administration insured
5 loans; (ii) that permitted by the Veterans Administration for
6 Veterans Administration guaranteed loans; or (iii) for other
7 loans, the greater of the fee permitted by the Federal
8 National Mortgage Association or the fee permitted by the
9 Federal Home Loan Mortgage Corporation.
- 10 b. Where the mortgage or deed of trust does not contain a due-
11 on-sale clause, a fee not to exceed one hundred twenty-five
12 dollars (\$125.00).

13 The fee authorized by this subdivision may be paid in whole or in
14 part by any party, but the total shall not exceed the maximum fee
15 set forth.

- 16 (2) Any lender may charge any person, firm or corporation that
17 assumes a loan of one hundred thousand dollars (\$100,000) or
18 greater which is secured by an interest in real estate other than as
19 described in subdivision (d)(1) above, the following fee:

- 20 a. Where the mortgage or deed of trust contains a due-on-sale
21 clause, such fee as may be agreed upon by the parties as a
22 result of the assumption.
- 23 b. Where the mortgage or deed of trust does not contain a due-
24 on-sale clause, a fee not to exceed five hundred dollars
25 (\$500.00), unless otherwise provided in the loan
26 documentation.

- 27 (3) For purposes of this subsection, the term 'due-on-sale clause'
28 means a contract provision that authorizes a lender to declare
29 immediately due and payable all sums secured by the lender's
30 security instrument if all or any part of the property, or an interest
31 therein, secured is sold or transferred without the lender's prior
32 written consent or contrary to the requirements of the mortgage or
33 the deed of trust. For purposes of this subsection, no lender shall
34 exercise its rights under the due-on-sale clause if such exercise is
35 prohibited by federal law as of the date of execution of the
36 contract containing said clause."

37 Sec. 2. This act is effective upon ratification.

Explanation of Legislative Proposal 10

Legislative Proposal 10 amends the fee which can be charged by a lender for assuming a loan.

On loans secured by a first mortgage or deed of trust on land where one to four dwelling units are located the fee is limited to:

- a. where there is a due on sale clause;
 - on FHA loans, the fee permitted by HUD,
 - on VA loans, the fee permitted by the VA, or
 - on other loans, the greater of the fees permitted by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.
- b. where there is no due on sale clause;-\$125.

On loans of \$100,000 or more on other real estate:

- a. where there is a due on sale clause;
 - an amount agreed upon by the parties, or
- b. where there is no due on sale clause;
 - \$500.

The act is effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H D

Proposal 11

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

HOUSE JOINT RESOLUTION DRHJR9001-RO015(1.25)

Sponsors:

Referred to:

1 A JOINT RESOLUTION TO COMMEMORATE THE SIXTIETH ANNIVERSARY
2 OF THE NORTH CAROLINA BANKING COMMISSION.

3 Whereas, on April 2, 1931, the General Assembly created the North
4 Carolina Banking Commission as the administrative agency that charters North
5 Carolina banks and regulates them for the safety of the public and for the economic
6 benefit of the State; and

7 Whereas, the first Commissioner of Banks assumed the duties of that
8 office on May 27, 1931; and

9 Whereas, the General Assembly has since committed to the charge of the
10 Banking Commission/Commissioner of Banks consumer finance companies in 1945,
11 money transmitters in 1963, preneed funeral trust licensees in 1969, bank holding
12 companies in 1984, mortgage bankers and brokers in 1988, and refund anticipation
13 lenders in 1989; and

14 Whereas, the Banking Commission has for 60 years faithfully discharged
15 its duty as a financial regulatory agency; and

16 Whereas, due to such diligent oversight and the resulting strength and
17 soundness of North Carolina banks, the North Carolina financial community is
18 viewed as one of the most enviable in the nation;

19 Now, therefore, be it resolved by the House of Representatives, the Senate
20 concurring:

21 Section 1. On May 28, 1991, the General Assembly does hereby officially
22 recognize the 60th anniversary of the North Carolina Banking Commission and

1 commends the Commission for its vigilance and for having produced a safe and
2 highly effective banking environment for North Carolina and its people.

3 Sec. 2. This resolution is effective upon ratification.

4

APPENDIX A

Chapter 802, 1989 Session Laws

PART XV.—DEPOSITORY INSTITUTIONS STUDY COMMISSION

Sec. 15.1. The North Carolina Depository Institutions Study Commission is hereby created. The Commission shall consist of 15 voting members and 3 nonvoting members: five Senators appointed by the President Pro Tempore of the Senate; five Representatives appointed by the Speaker of the House; one representative of the North Carolina commercial banking industry appointed by the President Pro Tempore of the Senate; one representative of the North Carolina savings institution industry appointed by the Speaker of the House; one representative of the credit union industry appointed by the President Pro Tempore of the Senate; one representative of the small and minority business community appointed by the Speaker of the House; and one representative of the low-income consumer community appointed by the President Pro Tempore of the Senate. The North Carolina Commissioner of Banks, the Administrators of the Savings and Loan and Credit Union Divisions of the North Carolina Department of Economic and Community Development shall serve as ex officio nonvoting members. All replacement appointments shall be filled in the same manner as initial appointments.

Sec. 15.2. The President Pro Tempore of the Senate shall designate one Senator as cochairman and the Speaker of the House of Representatives shall designate one Representative as cochairman. The cochairmen shall call the initial meeting of the Commission.

Sec. 15.3. The Commission shall study the impact of national developments within the depository institutions industry and what effect, if any, these developments will have upon North Carolina depository institutions. The scope of the study shall include, but not be limited to:

- (1) The effect on North Carolina depository institutions, if any, resulting from action by the federal government to restructure the Federal Savings and Loan Insurance Corporation;
- (2) The effect on North Carolina depository institutions, if any, resulting from any increased authority which may be granted to the Federal Deposit Insurance Corporation;
- (3) The effect on the North Carolina public, if any, if savings institutions were permitted to convert into commercial banks and commercial banks allowed to convert into savings institutions;
- (4) The level of competition between financial institutions in North Carolina;
- (5) The cost and availability of financial services available through North Carolina financial institutions; and
- (6) The desirability, if any, of consolidating North Carolina financial institution regulatory agencies into a single agency.

Sec. 15.4. The Commission may submit an interim report to the General Assembly on or before the convening of its 1990 Session, and shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1991 Session of the General Assembly by the filing of a report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its final report, the Commission shall terminate. The report of the Commission shall summarize the information obtained in the course of its inquiry, set forth any findings and conclusions, and recommend such administrative actions or legislative actions that may be necessary. If legislation is recommended, the Commission shall prepare and submit with its report or reports appropriate bills.

Sec. 15.5. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission may also, subject to the provisions of G.S. 120-32.02(b), enter into contracts for the provision of technical assistance it finds necessary for the performance of its responsibilities under this Part.

Sec. 15.6. Members of the Commission who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Commission shall be paid the per diem and allowance at the rate set forth in G.S. 138-5.

Sec. 15.7. There is transferred from the funds appropriated to the Banking Commission for the 1989-90 fiscal year to the Legislative Services Commission for the Depository Institutions Study Commission \$25,000. The Legislative Services Commission may allocate to the Commission additional funds necessary to enable the Commission to complete its study.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 1037

Short Title: Depository Institutions Study.

(Public)

Sponsors: Senator Staton.

Referred to: Rules.

April 27, 1989

A BILL TO BE ENTITLED

1

2 AN ACT TO CREATE THE DEPOSITORY INSTITUTIONS STUDY
3 COMMISSION.

4 Whereas, North Carolina has overall experienced financially sound
5 depository institutions benefiting greatly the people of this State; and

6 Whereas, nationally there has been an increased number of depository
7 institution failures, prompting the federal government to restructure the entire
8 depository insurance mechanism and the regulations applicable thereto; and

9 Whereas, North Carolina savings and other depository institutions may
10 potentially be negatively impacted by the number of depository institution failures
11 nationally; and

12 Whereas, the degree of consolidation and change within the federal
13 regulatory agencies and their ultimate and immediate effect upon North Carolina
14 depository institutions cannot be known at this time; and

15 Whereas, some proposed actions by Congress would as a practical matter
16 require study of North Carolina financial regulatory agencies and their assigned
17 functions; and

18 Whereas, it is the intention of the legislature to encourage and foster the
19 safe and sound development of all of its depository institutions and to protect this

1 State from the financial loss and adversity suffered by other regions in the United
2 States; Now, therefore,

3 The General Assembly of North Carolina enacts:

4 Section 1. The North Carolina Depository Institutions Study Commission
5 is hereby created. - The Commission shall consist of 18 members: five Senators
6 appointed by the President of the Senate; five Representatives appointed by the
7 Speaker of the House; one representative of the North Carolina commercial banking
8 industry appointed by the President of the Senate; one representative of the North
9 Carolina savings institution industry appointed by the Speaker of the House; one
10 representative of the credit union industry appointed by the President Pro Tempore
11 of the Senate; one representative of the small and minority business community
12 appointed by the Speaker of the House; and one representative of the low-income
13 consumer community appointed by the President of the Senate. The North Carolina
14 Commissioner of Banks, the Administrators of the Savings and Loan and Credit
15 Union Divisions of the North Carolina Department of Commerce shall serve as ex
16 officio nonvoting members. All initial appointments shall be filled in the same
17 manner as initial appointments.

18 Sec. 2. The President of the Senate shall designate one Senator as
19 cochairman and the Speaker of the House of Representatives shall designate one
20 Representative as cochairman. The cochairmen shall call the initial meeting of the
21 Commission.

22 Sec. 3. The Commission shall study the impact of national developments
23 within the depository institutions industry and what effect, if any, these developments
24 will have upon North Carolina depository institutions. The scope of the study shall
25 include, but not be limited to:

- 26 (1) The effect on North Carolina depository institutions, if any,
27 resulting from action by the federal government to restructure the
28 Federal Savings and Loan Insurance Corporation;
- 29 (2) The effect on North Carolina depository institutions, if any,
30 resulting from any increased authority which may be granted to the
31 Federal Deposit Insurance Corporation;
- 32 (3) The effect on the North Carolina public, if any, if savings
33 institutions were permitted to convert into commercial banks and
34 commercial banks allowed to convert into savings institutions:

1 (4) The level of competition between financial institutions in North
2 Carolina;

3 (5) The cost and availability of financial services available through
4 North Carolina financial institutions; and

5 (6) The desirability, if any, of consolidating North Carolina financial
6 institution regulatory agencies into a single agency.

7 Sec. 4. The Commission shall submit a final report of its findings and
8 recommendations to the General Assembly on or before the first day of the 1990
9 Session of the General Assembly by the filing of a report with the President of the
10 Senate and the Speaker of the House of Representatives. Upon filing its final report,
11 the Commission shall terminate. The report of the Commission shall summarize the
12 information obtained in the course of its inquiry, set forth any findings and
13 conclusions, and recommend such administrative actions or legislative actions that
14 may be necessary. If legislation is recommended, the Commission shall prepare and
15 submit with its report appropriate bills.

16 Sec. 5. With prior approval of the Legislative Services Commission,
17 necessary professional and clerical assistance shall be provided by the Legislative
18 Services Office. The Commission may hold its meetings in legislative buildings with
19 the prior approval from the Legislative Services Commission. The Commission may
20 also enter into contracts for the provision of technical assistance it finds necessary for
21 the performance of its responsibilities under this Part.

22 Sec. 6. Members of the Commission who are also members of the
23 General Assembly shall be paid subsistence and travel expenses at the rate set forth
24 in G.S. 120-3.1. Members of the Commission who are officials or employees of the
25 State shall receive travel allowances at the rate set forth in G.S. 138-6. All other
26 members of the Commission shall be paid the per diem and allowance at the rate set
27 forth in G.S. 138-5.

28 Sec. 7. There is appropriated from the General Fund to the Legislative
29 Services Commission for the Depository Institutions Study Commission \$25,000 for
30 fiscal year 1989-90. The Legislative Services Commission may allocate to the
31 Commission additional funds necessary to enable the Commission to complete its
32 study.

33 Sec. 8. This act shall become effective July 1, 1989.

APPENDIX B

MEMBERSHIP OF THE NORTH CAROLINA DEPOSITORY
INSTITUTIONS STUDY COMMISSION

Sen. William W. Staton,
Cochair
P. O. Box 1320
Sanford, NC 27330

Rep. George M. Holmes
Rt. 1, Box 14
Hamptonville, NC 27020

Sen. Aaron W. Plyler, Sr.
2170 Concord Avenue
Monroe, NC 28110

Sen. Robert C. Carpenter
180 Georgia Road
Franklin, NC 28734

Sen. J. Richard Conder
P. O. Box 1627
Rockingham, NC 28379

Sen. Wanda H. Hunt
P. O. Box 1335
Pinehurst, NC 28374

Mr. Richard Marvin
Wachovia Bank & Trust Co.
Winston-Salem, NC 27102

Mr. James Blaine
201 Hawthorne Road
Raleigh, NC 27605

Mr. James H. Carney
308 S. Leslie Street
Goldsboro, NC 27530

Rep. Harold J. Brubaker,
Cochair
138 Scarboro Street
Asheboro, NC 27203

Rep. W. W. Dickson
718 Avondale Road
Gastonia, NC 28054

Rep. John C. Hasty
P. O. Box 945
Maxton, NC 28364

Rep. Eugene Rogers
908 Woodlawn Drive
Williamston, NC 27892

Mr. Theo Pitt
318 Gravely Drive
Rocky Mount, NC 27801

Mr. Andy McCall
P. O. Box 1387
Fayetteville, NC 28302

Ex-Officio Members
Mr. William T. Graham
Commissioner of Banks
Dobbs Building

Mr. J. Phillips L. Johnston
Administrator
Credit Union Division
Dobbs Building

Mr. Robert Jacobsen
Administrator
Savings & Loan Division
Dobbs Building

Staff:

Ms. Kristin Godette, Commission Counsel
Mr. Warren Plonk, Fiscal Analyst
Ms. Jerry Batchelor, Commission Clerk



